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RECORD EXTRACT OF APPELLANT

IN THE
APPELLATE COURT
OF MARYLAND

September Term 2023,
No. 61

JUSTIN HOLDER

Appellant

V.

BENJAMIN ESTES

Appellee

Appeal from the Circuit Court of Washington County
The Honorable Andrew F. Wilkinson

RECORD EXTRACT

Volume 5D

JUSTIN HOLDER
APPELLANT

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND HEARING REQUEST

Plaintiff Benjamin Estes, by and through undersigned counsel, files this Motion for Summary Judgment, and for good cause states as follows:

I. Introduction.

Plaintiff's clear title to the lands subject to this action is obvious and incontrovertible either by clear record title and/or adverse possession. It cannot be overcome by any of the flailing attempts by Defendants to obfuscate Plaintiff's clear ownership rights which have burdened the court system. Summary judgment should be granted for Plaintiff.

This action arose from a series of trespasses by Defendant Justin Holder ("Holder") on Plaintiff's property. In response to the filing of this suit, Holder raised a frivolous dispute regarding the location of the boundary line between the Holder Property (owned by Defendants Deena Holder and Uncle Eddie's Brokedown Palace LLC) and the neighboring Estes Property (owned by Plaintiff) in order to avoid liability for trespass. Defendants have ignored the plain language of the deeds in the chains of title for both properties and a highly competent surveyor opinion. Even if title were deficient, which it is not, Plaintiff and his predecessors would have taken title by adverse possession years before Holder set foot on the disputed property.

II. Statement of Undisputed Facts.

Plaintiff is the landowner of record of property commonly known as Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756 (the "Estes Property"). (Ex. 1, Estes Aff., ¶ 2). Plaintiff's deed, dated March 13, 2013, is recorded in the land records of Washington County as Liber 4401, Folios 0100-0103, describing the property as:

> Being all of Lot 2 on the Plat of Subdivision entitled "Preliminary/Final Plat of the Subdivision of Lot 2 for M. Yvonne & Maxwell B. Hope, II" prepared by Frederick, Seibert & Associates, Inc. date September 27, 2006 and designated as Job No. 1967.2 and recorded in Plat folio 9186 among the Plat Records maintained by the Clerk of the Circuit Court for Washington County, Maryland, containing 8.28 acres of land, more or less

(*Id.* ¶ 3); (Ex. 2, Plat 9186); (Ex. 3, Estes Deed, at 1). Deena Holder claims to be the owner of 28 Antietam Drive, identified as "Proposed Reconfigured Parcel 127," and Uncle Eddies claims to own the property identified as "Proposed Reconfigured Parcel 414."[1] (Ex. 4, Plat No. 10955).

Maxwell and Yvonne Hope purchased the Estes Property in 1993. (Ex. 1, ¶ 15). From 1993 to 2010, they continuously maintained open, notorious, exhaustive, and actual possession of the Estes Property. (*Id.* ¶ 16). Plaintiff began leasing the Property from the Hopes in 2010 and purchased the Property from them in 2013. (*Id.* ¶¶ 17-18); (Ex. 3, Estes Deed). Maxwell Hope told Plaintiff that the Estes Property included property on both sides of Little Antietam Creek and pointed out that the Disputed Property was part of the Estes Property. (Ex. 1, ¶ 19). Deena and Uncle Eddies purchased the Holder Property on April 10, 2018. (Ex. 5, Holder Deed).

Beginning on October 1, 2018, Holder repeatedly, knowingly, and intentionally entered and trespassed on the Estes Property without Plaintiff's consent. (Ex. 1, ¶ 23). Holder removed, cut down, or otherwise cleared and destroyed trees, shrubs, and other plants and vegetation on the Estes Property. (*Id.* ¶ 24). When Plaintiff and Holder met on December 31, 2019, Holder

[1] Proposed Reconfigured Parcel 127, Proposed Reconfigured Parcel 414, and the predecessor parcels to each shall be described herein as the "Holder Property."

acknowledged that he and/or his agents had removed plants, alders, trees, underbrush, and/or vegetation from the Estes Property and showed Plaintiff where he had cleared. (*Id.* ¶ 25). Defendants destroyed numerous trees, plants, and bushes, among other vegetation, including walnut trees, spice bushes, sycamore seedlings, box elder seedlings/trees, wild rose bushes, and other plants, bushes, and trees on the Estes Property. (*Id.* ¶ 31).

On January 3, 2020, Holder sent Plaintiff a survey prepared by Frederick, Seibert & Associates, Inc. ("FSA") that he had in his possession at least six months prior, which showed the property lines. (*Id.* ¶ 6); (Ex. 6, Text, 1/3/20). On January 19, 2020, Holder admitted to clearing Plaintiff's land, sending him a text message stating, "I removed an old fence on the property that was a hazard. I looked across the creek and saw a nice creek bank. I thought it was common courtesy to clean up a mess on your side as well." (Ex. 1, ¶ 28); (Ex. 7, Text, 1/19/20). This fence had formed part of the shared boundary that separated the properties. (Ex. 1, ¶ 28). On or about January 18, 2020, Holder sent a text message to Plaintiff stating, "Please maintain your property or I will," indicating that that he intended to continue to enter onto Plaintiff's land and continue to clear or otherwise remove vegetation on the Estes Property (*Id.* ¶ 27). Plaintiff witnessed Holder on his land in early 2020, of which he has photographs. (Ex. 1, ¶ 29); (Ex. 8, Photos). Holder recorded a video of himself walking in the Spring Branch, which is entirely on Plaintiff's property, and references clearing neighbor's land. (Ex. 1, ¶ 30); (Ex. 9, Video).

The chains of title for both properties, including plats of both properties prepared by FSA separately on behalf of the parties, clearly show the boundary line between the properties being on the western side of Little Antietam Creek. Licensed surveyor FSA surveyed the Estes and Holder Properties on several occasions. (Ex. 2, 4, 10, 12). FSA surveyed the Estes Property in 1990 for Plaintiff's predecessor in title. (Ex. 12, 1990 Deed). The boundaries contained in that

survey are consistent with both the prior and subsequent deeds in the chain of title. (*Id.*). FSA surveyed the Estes Property again in 1993 and 2007 for Plaintiff's predecessors, and the Holder Property in 2019 for Holder. (Ex. 2, 4, 10). The deeds of Plaintiff's predecessors in title are recorded in Liber 1092 at Folio 694, dated May 14, 1993, and by Confirmatory Deed dated July 15, 1993, recorded at Liber 1108 at Folio 582 in the Land Records. (Ex. 16). In November 2020, Plaintiff had FSA place surveyor's flags and markers that clearly and visibly demarcated his property and which are described in the recorded deeds and surveys of his property. (Ex. 1, ¶ 33).

The survey prepared by FSA in April 2019 depicts the shared boundary running between the Estes and Holder Properties. (Ex. 11, Survey 2019). The shared boundary runs from the location where "L10" and "L11" through to the spot where the 269.59 (S25°59'35"W) line terminates at the property corner joining line "L2" and is the red line on Exhibit 10. (*Id.*). The Estes Property is shown with black diagonal lines on Ex. 11, the Holder Property is shown with blue diagonal lines, and portion of the Estes Property primarily in the dispute is highlighted with yellow highlighting (the "Disputed Property"). (*Id.*).

The legal descriptions in the chains of title for the Estes and Holder Properties each have a line that follows the Little Antietam Creek. (Ex. 13, Frederick Dep. at 126-27). However, both chains of title then call for the remainder of the shared boundary line to leave Little Antietam Creek and follow a series of stones set at specific courses and distances. (*Id.* at 12-13). Surveyor Frederic Frederick opined that the reference to specific stones, courses, and distances meant the shared boundary line does not follow Little Antietman Creek and that, if that was the intention, the deeds would have called to Little Antietam Creek as it had in previous calls. (*Id.* at 18-19, 104-05). He opined that the disputed property is a part of the Estes Property. (*Id.* at 111-12).

III. Standard of Review.

Summary judgment is appropriate under Maryland Rule 2-501(a) when "there is no genuine dispute as to any material fact and [the moving] party is entitled to judgment as a matter of law." *Mohammad v. Toyota Motor Sales, U.S.A., Inc.*, 179 Md. App. 693, 701 (2008) (internal quotation marks omitted). "A material fact is a fact the resolution of which will somehow affect the outcome of the case." *Jones v. Mid-Atlantic Funding Co.*, 362 Md. 661, 675 (2001). "A dispute as to facts relating to grounds upon which the decision is not rested is not a dispute with respect to a *material* fact and such dispute does not prevent the entry of summary judgment." *Id.*

"[I]n order to defeat a motion for summary judgment, the opposing party must show that there is a genuine dispute as to a material fact by proffering facts which would be admissible in evidence." *Beatty v. Trailmaster Products, Inc.*, 330 Md. 726, 737 (1993). "Consequently, mere general allegations which do not show facts in detail and with precision are insufficient to prevent summary judgment." *Id.* at 738. "Moreover, a person opposing summary judgment cannot merely allude to the existence of a document and thereby hope to raise the specter of dispute over a material fact which would defeat a motion for summary judgment." *Id.* Lastly, "[s]peculation concerning the existence of unproduced evidence will not defeat" a motion for summary judgment." *Vogel v. Touhey*, 151 Md. App. 682, 705 (2003). As shown below, in light of the undisputed facts, Plaintiff is entitled to judgment as a matter of law.

IV. Argument.

A. Plaintiff is entitled to judgment as to his claim for quiet title.

The purpose of an action to quiet title is to "protect the owner of legal title from being disturbed in his possession and from being harassed by suits in regard to his title by persons setting up unjust and illegal pretensions." *Wathen v. Brown*, 48 Md. 655, 658 (1981). Pursuant to common law and § 14-108 of the Real Property Article of the Maryland Annotated Code,

Plaintiff is the rightful, legal owner of the entirety of the Estes Property, including land on the western side of Little Antietam Creek and all of the land under any waters shown within the Estes Property, by color of title (record title) and/or claim of right (adverse possession).[2] Plaintiff is entitled to a judgment quieting title to the entirety of the Estes Property, confirming that the location of the shared boundary line between the properties is consistent with the platted boundaries of the Estes Property, and enjoining Defendants from further trespass.

1. Record title reflects that Plaintiff is the legal owner of the disputed property.

In a quiet title action, a plaintiff must prove by "clear proof" possession and a legal claim to title and the burden then shifts to defendant to establish superior title. *See Porter v. Schaffer*, 126 Md. App. 237, 274 (1999). "Clear proof" does not require "clear and convincing evidence"; courts apply the preponderance of the evidence standard. *Id.* at 261, n.15. A defendant has the burden "to establish a title which he has set up to defeat the complainant's claim of ownership." *Id.* at 260. Where a defendant, in a quiet title action, substantially asserts and relies upon a fact as an affirmative issue, he must establish such fact. *Id.* at 261-62. A defendant "who cannot establish his own record title has no basis to complain about the strength of the plaintiff's title." *Id.* at 274. There is nothing in the record that suggests anything but the absolute superiority of Plaintiff's title, and the complete failure of title of the Defendants.

A plaintiff must show "color of title" at a minimum. *Id.* at 262. "In order for title based on a deed to 'give color,' it must be 'so far *prima facie* good in appearance as to be consistent

[2] Section 14-108(a) states: "Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of his or his predecessor's adverse possession for the statutory period, when his title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it, or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, the person may maintain a suit in equity in the county where the property lies to quiet or remove any cloud from the title, or determine any adverse claim." Md. Code Ann., Real Prop. § 14-108(a).

with the idea of good faith on the part of the party entering under it.'" *Gore v. Hall*, 206 Md. 485, 490-91 (1955). "Color of title" is "title papers good enough in appearance and ostensible effect to give them the right to the bona fide belief they held that they owned the land." *Spicer v. Gore*, 219 Md. 469, 476 (1959). "The canons of deed interpretation are well-settled in Maryland. The interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law." *Webb v. Nowak*, 433 Md. 666, 681 (2013). Courts have held that "a call to a monument must be recognized unless the object to which the call refers has been lost." *Id.* "[M]onuments control over courses and distances where they continue to exist, or their locations can be determined with reasonable certainty." *Id.* Section 14-108(a) "recognizes that possession may be actual or constructive." *Wash. Mut. Bank. v. Homan*, 186 Md. App. 372, 405 (2009). The land that is west of the Little Antietam Creek is almost all located in the 100 year flood plain and should be considered wild lands and are vacant and unoccupied. With vacant and unoccupied land, one only needs to show constructive and peaceable possession. *Id.*

An aspect of establishing record title is proving the on-the-ground location. *Porter*, 126 Md. App. at 265. "Every conveyance must either on its face, or by words of reference, give to the subject intended to be conveyed, such a description as to identify it. If it be land it must be such as to afford the means of locating it." *Id.* Plaintiff has proven the on-the-ground location of the property. Plaintiff's own deed is a recorded survey, Plat 9186 among the land records of Washington County, which clearly show the location of the Plaintiff's property. (Ex. 2). Predecessors in Plaintiff's chain of title recorded an additional survey among the land records of Washington County, plat 4040. (Ex. 10). To demonstrably locate the on-the-ground location of his property, Plaintiff engaged FSA to place property markers on the property that is the subject of this litigation in the fall of 2020. (Ex. 1, ¶ 33). Frederick opined that the disputed property is

part of the Estes Property. (Ex. 13, at 111-12). Defendants have not presented any evidence to refute Frederick's opinion or to raise in dispute that Frederick's plats followed the courses and distances in the Holder and Estes chains of title.

Plaintiff has proven by a preponderance of evidence that he has actual title but also that, at a minimum, he has color of title to the Disputed Property. Dispositive of the Plaintiff's color of title and record title are the numerous recorded deeds and surveys, including Defendants' own recorded documents that show the Plaintiff's clear title. Defendants have recorded at least three deeds clearly admitting and acknowledging Plaintiff's record title, including a survey showing the location of Plaintiff's property and the Deed to Deena Holder, the Deed to Uncle Eddie's, the Deed from Smith to Uncle Eddie's, and Plat 10955. (Ex. 4-5).

There is no dispute that for over 100 years, the deeds in both chains of title agree with very little variation. All deeds in the Uncle Eddies chain of title, including the last recorded deed indicate that the Uncle Eddies property begins as described: "Beginning at a planted stone standing near and in a Northerly direction from the West end of what was formerly the Washington County Rail Road bridge across "Little Antietam" where said stream passes through the lands formerly belonging to Jacob Keedy." (Ex. 15, Deed Recorded at 6468 345). The deed at issue does not simply refer to the boundary line following Little Antietam Creek; it provides specific courses and distances that have been carried forward in the chain of title and which were considered by Frederick in determining the location of the boundary line (Ex. 13, at 12-13, 18-22, 27-29). Plaintiff's title papers are certainly good enough in appearance and ostensible in effect to give the right to the bona fide belief he owns the land in question.

Plaintiff's expert, John Dowling, opined that the survey prepared for Uncle Eddies in August 2021, by George Nagel with Fox and Associates, Inc., failed to actually plot the calls

contained in Uncle Eddies deed or the description of the deed.[3] (Ex. 14, Dowling Aff., ¶ 7). On the Uncle Eddies survey, the red line superimposed by Dowling reflects segments of the Estes Property shown in deed 101-583, dated April 2, 1895. (*Id.* ¶ 8); (Ex. 14B). The blue line he added reflects segments of the Holder Property, reflected in Uncle Eddies deed, WMcKK 6-363, dated March 22, 1872. (*Id.*). The "call" at the end of the North 50 degree, West 73 perch (1204.5 feet) line of 101-583 is to a stone planted on the "west Bank" of the Creek. (*Id.* ¶ 9). The "call" at the end of the South 20 degrees, west 17 perch line is for a stone planted near the west end of a stone abutment, not the stream. (*Id.*). Nagel did not plot the calls contained in the deed or the description of the deed. (*Id.* ¶ 10). Instead, he found a stone, made one line to the middle of the creek and then made up new calls down the middle of the creek. The blue that Dowling plotted is where the calls in the Eddie's would be if Nagel had plotted the deed lines. (*Id.*). In sum, Defendants' own surveyor did not even plot the confirmatory deed it purports to draw. (*Id.*).

By Defendants' own admissions and through the record chain of title to Uncle Eddies' land, it is crystal clear that the Holders do not have any ownership or lawful claims to rights to any property in the Plaintiff's recorded properties that are at issue in this case. No evidence has been provided that the Holders in and of themselves retain any ownership interest in the land in dispute. Even the survey provided by Defendants' expert witness, George Nagel, showed only land in the area in question as being owned by the Plaintiff or Uncle Eddies. The Holders cannot rely on anybody else's potentially superior title to defeat Plaintiff's title claim. *Porter*, 126 Md. App. at 161-62 (stating that an action to quiet title may not be defeated by showing that some third party has an interest in the land superior to that of the Plaintiff).

[3] Dowling is an attorney admitted to practice law in Maryland. He is a Registered Land Surveyor, with over 48 years experience in surveying and over 40 years experience as a title abstractor. He is a member of the Maryland Society of Surveyors and the National Society of Professional Surveyors. He has previously been qualified as an expert witness in 14 circuit courts in Maryland. (Ex. 14A).

Nagel failed to locate the on-ground location of Uncle Eddies boundary title, failed to aver any titled ownership in Defendants, and directly conflicts with the explicit language of the deed it purports to memorialize. Nagel attempted through his survey to locate Uncle Eddies titled land "on the ground." But the survey shows no such "on the ground" location of the titled land, explicitly stating that "[t]his plat is not intended to show every matter affecting the ownership and use nor every matter restricting the ownership and use of this property" and that "[t]his plat is not intended to replace an examination of title or note all matters affecting title." (Ex. 17). The survey fails to plot the very deed it purports to memorialize (confirmatory deed recorded at 6845 345). Nagel failed to follow the clear and explicit calls contained in the deed. His survey only draws a purported "area of apparent overlap" that follows new, distinct, and irreconcilable courses and distances inapposite to the calls in the deed itself.

Plaintiff has proved actual or constructive peaceable possession, and Defendants have failed to establish superior title. Plaintiff has property markers on the property and has averred to walking, fishing, exploring, playing on, swimming, aiding animals, and enjoying all areas of the land, including the area where Holder trespassed and cleared, since 2010. (Ex. 1, ¶ 33).

2. Plaintiff has obtained valid title through adverse possession.

"Adverse possession is a method whereby a person who was not the owner of property obtains a valid title to that property by the passage of time." *Yourik v. Mallonee*, 174 Md. App. 415, 422 (2007). The elements of adverse possession are well settled and require three elements: that the possession be (1) actual, open and notorious, an exclusive; (2) continuous or uninterrupted for the requisite period of 20 years; and (3) hostile, under claim of title or ownership. *Senez v. Collins,* 182 Md. App. 300, 323-24 (2008). The first element requires simply that the possession be visible and notorious, such that the true owner may be presumed to have notice of it, though "actual notice to the owner is not required." *Id.* at 325. "Possessory acts of

dominion over land may be sufficient to charge the record owner with knowledge that the land is adversely possessed." *Id.* The second element requires the possession continue for the entire period without interruption, either by single owner or tacking successive periods of ownership together. *Id.* at 331-32. "[T]wo possessions will be tacked if it appears that the adverse possessor actually turned over possession of that part as well of that portion expressly included in his deed." *Id.* at 333. The third element, possession that is hostile under claim of title or ownership, does not require "enmity or ill will." *Id.* at 339. Rather, "hostile" means a "possession that is adverse in the sense of it being without license or permission and unaccompanied by any recognition of…the real owner's right to the land." *Id.* at 339-40 (internal quotations omitted). While the claimant has the burden to prove title by adverse possession, once claimant has made a satisfactory showing as to open, continuous use for the statutory period, "[t]he burden then shifts to the landowner to show that the use was permissive." *Id.* at 340. In establishing the hostility of a particular use, "a showing that the use has been made 'openly, continuously, and without explanation for twenty years,' justifies a presumption that such use was adverse." *Id.*

Plaintiff and his predecessors used and occupied the land, maintained it, and it was separated from the Holder Property by the classic type of adverse possession evidence: a fence. *See Costello v. Staubitz*, 300 Md. 60, 68 (1984) (discussing the significance of fences in adverse possession analysis). "[W]here visible boundaries have existed for the statutory period of limitations, if there is evidence of unequivocal acts of ownership, title will vest in the claimant, not only to land actually occupied, but rather to all of the land delineated by the visible boundary." *Id.*

Possession ran from at least 1993 to 2018, when Holder arrived, a period of more than 20 years. The possession was without permission and done in a manner consistent with the normal use of one's own property, *i.e.* without recognition of the rights of another. Holder's entry onto

the Disputed Area in 2018 does not defeat Plaintiff's adverse possession claim, because the 20-year period had already accrued and vested in Plaintiff in 2013, seven years earlier.[4] *See Miceli v. Foley*, 83 Md. App. 541, 557-58 (1990) (re-entry only a defense to adverse possession if it interrupts the 20 year period). Upon Holder's alleged entry, Plaintiff had 20 years to file suit to confirm his own title. *Yourik v. Mallonee*, 174 Md. App. 415, 425 (2007). This suit was filed in 2020, 18 years short of the period of limitations. A suit to quiet title simply confirms the validity of title by adverse possession. Upon satisfaction of the elements of the claim, title by adverse possession vests automatically. *See Knights and Ladies of Samaria v. Board of Educ. of Charles County*, 113 Md. App. 656, 674 (1997). Plaintiff already had fee simple title as of 2013 and there was nothing for Holder to interrupt in 2018. From 2010 to 2018, Plaintiff, his family, and invitees were the only persons to use, maintain, or occupy the Disputed Property. From at least 1993 to 2018, Plaintiff and his predecessors satisfied elements of adverse possession by actually, openly, notoriously, hostilely, visibly, and adversely possession the Property.

B. Plaintiff is entitled to judgment in his favor as to his claim for trespass.

The tort of trespass is defined as "an intentional or negligent intrusion upon or to the possessory interest in property of another." *Litz v. Md. Dep't of Env't*, 446 Md. 254, 276-77 (2016). A trespass occurs "[w]hen a defendant interferes with a plaintiff's interest in the exclusive possession of land by entering or causing something to enter such land." *Adams v. NVR Homes, Inc.*, 193 F.R.D. 243, 250 (D. Md. 2000).

Beginning on October 1, 2018, Holder repeatedly, knowingly, and intentionally entered

[4] Adverse possession vested at least in 2013, because the Hopes began possessing the Estes Property in 1993. The adverse possession of the land in actuality goes back 120 years, as all deeds on both sides agree. The adverse possession elements are shown through the three or four deeds that show Plaintiff's property line, Platt 10955 (Ex. 4), the confirmatory deed, and a letter to DLLR, in which Defendants agreed that their lands are west of Little Antietam and Plaintiff's land contains Little Antietam.

and trespassed on the Estes Property without Plaintiff's consent. (Ex. 1, ¶ 23). Holder removed, cut down, or otherwise cleared and destroyed trees, shrubs, and other plants and vegetation on the Estes Property. (*Id.* ¶ 24). Holder has interfered with Plaintiff's interest in the exclusive use and possession of his land, and Plaintiff is entitled to judgement as to Count I.

C. Plaintiff is entitled to judgment in his favor as to his claim for violation of § 5-409 of the Natural Resources Article.

Section 5-409 of the Natural Resources Article of the Maryland Annotated Code provides right of action for a party aggrieved by another party's impermissible "cutting, burning, or injuring [of] merchantable trees or timber":

> Any person, his aiders, abettors, and counsellors, who willfully, negligently, recklessly, wrongfully, or maliciously enters upon lands or premises of another without written permission of the owner of the lands or premises, in order to cut, burn, or otherwise injure or destroy, or cause to be burned, or otherwise inured, or destroyed, any merchantable trees or timber on the land is liable to the party injured or aggrieved in an amount triple the value of the trees or timber cut, burned, or otherwise injured or destroyed, plus the costs of any surveys, appraisals, attorney fees, or court fees in connection with the case. The damages are recoverable in a civil action, as in any other case.

Md. Code Ann., Nat. Res. § 5-409(a). It is well-established that a "landowner is generally limited to cutting back growth to the property line; he may not enter the adjoining landowner's property to chop down a tree or cut back growth without his neighbor's consent." *Melnick v. C.S.X. Corp.,* 312 Md. 511, 515-16 (1988).

Defendants have violated this statutory duty under § 5-409 by cutting, burning, injuring, and/or destroying numerous trees belonging to Plaintiff. Holder has admitted to Plaintiff that he and/or his agents had removed trees, plants, and other vegetation, including walnut trees and sycamore seedlings, from the Estes Property and showed Plaintiff where he had cleared these trees. (Ex. 1, ¶¶ 24, 31). Defendants Deena and Uncle Eddies—the abutters upon who Holder relies to access Plaintiff's land—have aided and abetted Holder's trespass and destruction of the

trees on Plaintiff's property. Further, the statue provides that an aider and abettor can be liable for their "negligence." Even if Deena and Uncle Eddie's assert that Holder acted on his own, they are still liable based on their negligence as they knew and/or should of known of his trespass and conduct in cutting, burning, or otherwise destroying tress on the Estes Property.

D. Plaintiff is entitled to judgment as to his claim for aiding and abetting.

"A person may be held liable as a principal…if he, by any means (words, signs, or motions) encouraged, incited, aided or abetted the act of the direct perpetrator of the tort." *Alleco Inc. v. Harry & Jeanette Weinberg Foundation, Inc.*, 340 Md. 176, 199 (1995). Plaintiffs must prove "(1) a tortious act committed by a primary actor, (2) the defendant's knowledge of that tortious act, and (3) the defendant's substantial assistance in the commission of that tortious act." *Id. See Saadeh v. Saadeh, Inc.*, 150 Md. App. 305, 328 ("To be liable in tort, the aider or abettor must have engaged in assistive conduct that he would know would contribute to the happening of that act."). Deena and/or Uncle Eddies hold title to the Holder Property. (Ex. 4). As the abutting title holders, Deena and/or Uncle Eddies provided Holder with access necessary to repeatedly enter upon Plaintiff's land and injure Plaintiff's property. Their actions have assisted, encouraged, and/or allowed Holder to commit trespass against Plaintiff and violate § 5-409 of the Natural Resources Article.

E. In the alternative, Plaintiff is entitled to judgment in his favor as to ejectment.

In the alternative, or to the extent the Court determines Defendants are in actual or constructive possession of some portion of the Estes Property, Plaintiff is entitled to relief by way of ejectment pursuant to Md. Code Ann., Real Prop. § 14-108.1. Relief in an ejectment action is appropriate where a person that is not in possession of property has title to that property and right to possession thereof. *See* Md. Code Ann., Real Prop. §14- 108.1(b). The plaintiff has

the burden of presenting a prima facie case showing the legal right of possession by "color of title or claim of right by reason of his or his predecessor's adverse possession for the statutory period." *See Porter*, 126 Md. App. at 274-75. Color of title simply means good record title. *Id.* Plaintiff can meet his burden under either analysis.

If different parts of the disputed property are being possessed by different persons, then one portion could be subject to ejectment while another is subject to quiet title. Thus, Holder could be ejected from any portion of the Disputed Area that the Court determines he actually possesses and Plaintiff could obtain quiet title relief with respect to any portion that the Court determines the Plaintiff possesses. Defendants have repeatedly and unlawfully entered the Estes Property. (Ex. 1, ¶¶ 23-31). Plaintiff is the rightful, legal owner of the Estes Property, including land on the western side of Little Antietam Creek and the land beneath any creeks or streams on the Estes Property, by color of title (record title) and/or claim of right (adverse possession).

Plaintiff's chain of title, with respect to the shared boundary line with the Holder Property, lines up with the chain of title for the Holder Property. (Ex. 13). The deeds have the same calls going west from Little Antietam Creek to stones set west of the banks of the creek, and Frederick identified the same lines while separately surveying both the Estes and Holder Properties at different times. (*Id.*). When Holder demanded that Frederick analyze the boundary lines differently (*i.e.* consistently with Holder's claim), he was unable to do so, because Holder's proposed boundary lines are mathematically impossible. (*Id.*). Plaintiff is entitled to a judgment ejecting Defendants from the Estes Property.

V. Conclusion.

Plaintiff Benjamin Estes respectfully requests that, in light of the undisputed facts, that the Court grant judgment in Plaintiff's favor as to all claims in the Second Amended Complaint.

HEARING REQUEST

Plaintiff requests a hearing under Md. Rule 2-311(f) on his Motion for Summary Judgment.

Respectfully submitted,

By: /s/
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 21, 2022, a copy of the foregoing was served on all counsel of record and parties via MDEC.

/s/
Alyse L. Prawde

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

AFFIDAVIT OF BENJAMIN ESTES

COMES NOW, the Affiant, and hereby swears and affirms under penalty of perjury and upon personal knowledge that the following is true and correct:

1. My name is Benjamin Esetes. I am over the age of eighteen (18) and am competent to testify.

2. I am the owner of Lot 2, Mt. Hebron Road, Keedysville, Maryland 21756, Tax ID No. 19-013316 (the "Estes Property").

3. The document attached as Exhibit 2 to my Motion for Summary Judgment is a true and accurate copy of Plat 9186, which depicts the boundaries of my property.

4. The document attached as Exhibit 3 to my Motion for Summary Judgment is a true and accurate copy of the deed for my property.

5. The document attached as Exhibit 4 to my Motion for Summary Judgment is a true and accurate copy of Plat No. 10955, which depicts the property of Defendants Deena Holder and Defendant Uncle Eddies Brokedown Palace, LLC.

6. Deena Holder claims to be the owner of 28 Antietam Drive, Keedysville, Maryland, which is identified on Exhibit 4 as "Proposed Reconfigured Parcel 127."

Exhibit 1

7. Uncle Eddies claims to be the owner of the real property identified on the plat attached as Exhibit 4 as "Proposed Reconfigured Parcel 414."

8. Proposed Reconfigured Parcel 127, Proposed Reconfigured Parcel 414, and the predecessor parcels to each are collectively described herein as the "Holder Property."

9. Exhibit 4 visually depicts the shared boundary running between the Estes Property and Holder Property.

10. The shared boundary runs from the location where "L10" meets "L11" through to the spot where the 269.59 (S25°59'35"W) line terminates at the property corner joining line "L2" and is the red line on Exhibit 4.

11. For the sake of clarity, the Estes Property is shown with black diagonal lines on Exhibit 4, the Holder Property is shown with blue diagonal lines (sometimes over black diagonal lines going the opposite direction), and the portion of the Estes Property primarily in dispute (the "Disputed Property") is highlighted with yellow highlighter.

12. Frederick Seibert & Associates, Inc. ("FSA") has surveyed the Estes Property and Holder Property on several occasions.

13. The document attached to my Motion for Summary Judgment as Exhibit 10 is a true and accurate copy of a survey plat prepared by FSA.

14. The document attached to my Motion for Summary Judgment as Exhibit 5 is a true and accurate copy of a deed containing a metes and bounds legal description of the Holder Property that was prepared by FSA.

15. Maxwell Hope and Yvonne Hope purchased the Estes Property in 1993.

16. From 1993 through 2010, the Hopes continuously maintained open, notorious, exclusive, and actual possession of the Disputed Property and were the only persons to occupy, maintain, or otherwise make use of the Disputed Property during that time frame.

17. In 2010, I began leasing the Estes Property from the Hopes.

18. In 2013, I purchased the Estes Property from the Hopes.

19. Maxwell Hope told me that the Estes Property included property on both sides of Little Antietam Creek and specifically pointed out that the Disputed Property was part of the Estes Property.

20. At the time he told me this, there was an old fence on the Disputed Property that forms part of the shared boundary and which separated the Estes Property from the Holder Property. Defendant Justin Holder ("Holder") has admitted to removing that fence.

21. From 2010 through 2018, my family, invitees, and me were the only persons to use, maintain, or otherwise occupy the Disputed Property.

22. From at least 1993 through 2018, a period of 25 years, my predecessors and I satisfied the elements of adverse possession with respect to the Disputed Property by actually, openly, notoriously, hostilely, visibly, and adversely possessing the Disputed Property, maintain same, paying taxes on same, and generally using and occupying the Disputed Property in the normal manner that similar property is used by a landowner.

23. Beginning on or around October 1, 2018, Holder repeatedly, knowingly, and intentionally entered and trespassed on the Estes Property without my consent.

24. Holder removed, cut down, or otherwise cleared and destroyed trees, shrubs, and other plants and vegetation on the Estes Property.

25. I met with Holder on December 31, 2019. At that meeting, Holder acknowledged that he and/or his agents had removed had removed plants, alders, trees, underbrush, and/or vegetation from the Estes Property and showed me where he had cleared.

26. On January 3, 2020, Holder sent me a survey prepared by FSA that Holder had in his possession for at least the previous six months, which showed the property lines. (Ex. 6 to the Motion for Summary Judgment).

27. On or about January 18, 2020, Holder sent a text message to me stating, "Please maintain your property or I will," indicating that that he intended to continue to enter onto my land and continue to clear or otherwise remove vegetation on the Estes Property."

28. On January 19, 2020, Holder admitted to clearing my land, sending me a text message stating, "I removed an old fence on the property that was a hazard. I looked across the creek and saw a nice creek bank. I thought it was common courtesy to clean up a mess on your side as well." (Ex. 7 to Motion for Summary Judgment). The fence had formed part of the shared boundary that separated the Estes Property and Holder Property.

29. In early 2020, I witnessed Holder on the Estes Property, and I took photos of this trespass. (Ex. 8 to Motion for Summary Judgment).

30. Holder recorded a video of himself walking in Spring Branch, which is entirely on my property, and he references that he will clear neighbors' land for them. (Ex. 9 to Motion for Summary Judgment).

31. Holder and/or his agents destroyed numerous trees, plants, and bushes, among other vegetation, including walnut trees, spice bushes, sycamore seedlings, box elder seedlings/trees, wild rose bushes, and other plants, bushes, and trees.

32. I have requested that Holder provide me with some proof that he has a valid claim to part of my property. Holder has not presented any evidence to refute the opinions of surveyor Frederic Frederick or raise a dispute that Mr. Frederick's plats followed the courses and distances contained in the Holder and Estes chains of title.

33. On or around November 13, 2020, I had FSA place surveyor's flags and markers that clearly and visibly demarcated my property and which are described in the recorded deeds and surveys of my property.

I declare or affirm under the penalties of perjury that the content of the foregoing Affidavit is true and correct and is based upon personal knowledge.

Benjamin Estes

6-21-24
Date

E-FILED; Washington Circuit Court
Docket: 5/12/2021 3:16 PM; Submission: 5/12/2021 3:16 PM

4491 0100

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 4491, p. 0100, MSA_CE18_4416. Date available 03/19/2013. Printed 05/10/2021.

RTA#13-17330D **TAX ACCOUNT#19-013316**

THIS DEED

Made this 13th day of March, 2013 by and between MAXWELL B. HOPE II and M. YVONNE HOPE, his wife, GRANTORS, parties of the first part, and

BENJAMIN N. ESTES, GRANTEE, party of the second part;

Witnesseth, that for consideration in the amount of **ONE HUNDRED TWELVE THOUSAND, FIVE HUNDRED ($112,500.00) AND NO/100'S DOLLARS** and other good and valuable considerations, the said parties of the first part do grant and convey unto the party of the second part, in fee simple, as sole owner, all that property, together with the improvements thereon, situate along the southern side of Mt. Hebron Road, in Election District No. 19, in the Town of Keedysville, Washington County, Maryland, and being described as follows:

Being all of Lot 2 on the Plat of Subdivision entitled "Preliminary/Final Plat of Subdivision of Lot 2 for M. Yvonne & Maxwell B. Hope, II" prepared by Frederick, Seibert & Associates, Inc. dated September 27, 2006 and designated as Job No. 1967.2 and recorded in Plat folio 9186 among the Plat Records maintained by the Clerk of the Circuit Court for Washington County, Maryland; containing 8.28 acres of land, more or less.

TAX ID#: 19-013316

Being part of the same property the Grantors received by deed recorded in Liber 1092 at Folio 694 and subsequently by Confirmatory Deed recorded in Liber 1108 at folio 582, among the Land Records of Washington County, Maryland.

Together with the buildings and improvements thereupon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining. Subject to covenants and restrictions of record.

And the said parties of the first part covenant that they will warrant specially the property hereby conveyed; and that they will execute such further assurances of said land as may be requisite.

Exhibit 3

4491 0101

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

Witness her hand and seal.

M. Yvonne Hope

STATE OF TENNESSEE, COUNTY OF TODD : SS:

I hereby certify that on this 8 day of March, 2013, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared **M. Yvonne Hope,** known to me (or satisfactorily proven) to be one of the persons who executed the foregoing deed and acknowledged the same to be her act and deed, that the consideration mentioned therein is true and correct, ~~and that she is a resident of the State of Maryland.~~

Given under my hand and seal, the day and year aforesaid.

Brittnye L Mayes
NOTARY PUBLIC

My Comm. expires: 07-17-2013

BRITTNYE L. MAYES
STATE OF TENNESSEE NOTARY PUBLIC
MONTGOMERY COUNTY

COURT
40
20
855
562.50
1477.50

IMP FD CLERK 4		40.00
RECORDING FEE		20.00
RECORDATION T		855.00
TR TAX STATE		562.50
NON-RESIDENT		3,678.23
TOTAL		5,155.73
Rcpt# MAG2	Rcpt # 83373	
DJN TLR	Blk # 1506	
Mar 14, 2013	01:19 PM	

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 4491, p. 0101, MSA_CE18_4416. Date available 03/19/2013. Printed 05/10/2021.

4491 0102

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

Witness his hand and seal.

Maxwell B. Hope, II

STATE OF MARYLAND, COUNTY OF WASHINGTON: SS:

I hereby certify that on this 13th day of March, 2013, before me, the undersigned, a Notary Public in and for the State and County aforesaid, personally appeared **Maxwell B. Hope II,** known to me (or satisfactorily proven) to be one of the persons who executed the foregoing deed and acknowledged the same to be his act and deed, that the consideration mentioned therein is true and correct, and that he is a resident of the State of Maryland.

Given under my hand and seal, the day and year aforesaid.

NOTARY PUBLIC

CINDY HIGGINS NOTARY PUBLIC WASHINGTON COUNTY, MD EXPIRES JANUARY

My Comm. expires: 1-23-14

This instrument was prepared under the supervision of an attorney admitted to practice in the Court of Appeals of the State of Maryland.

TIFFANY A. REIFF, ATTORNEY

After recording, please mail to:
Benjamin N. Estes
22 Mt. Hebron Road
Keedysville, MD 21756

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Washington County
By Date 3/14/13

Signed Letter of Intent
AGRICULTURE TAX $ No Ag Tax
ACREAGE 8.28
CLERK 3.14.13

TODD L. HERSHEY, TREASURER
TAXES PAID 3-14-13pw

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 4491, p. 0102, MSA_CE18_4416. Date available 03/19/2013. Printed 05/10/2021.

4491 0103

State of Maryland Land Instrument Intake Sheet

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

☐ Baltimore City ☑ County: WASHINGTON

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

1 Type(s) of Instruments — ( ) Check Box if addendum Intake Form is Attached.

X	Deed		Mortgage		Other		Other
X	Deed of Trust		Lease				

2 Conveyance Type Check Box

	Improved Sale Arms-Length *[1]*		Unimproved Sale Arms-Length *[2]*		Multiple Accounts Arms-Length *[3]*		Not an Arms-Length Sale *[9]*

3 Tax Exemptions (if applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	"AGRICULTURAL"

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 112,500.00	Transfer Tax Consideration	$
Any New Mortgage	$ 9,000.00	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
		X ( ) per $500 =	$
Full Cash Value:	$ 112,500.00	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$ 20.00
Surcharge	$ 40.00	$ 40.00
State Recordation Tax	$ 855.00	$
State Transfer Tax	$ 562.50	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
19	013316	P/O1108/582	0073	0271	(5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
M. YVONNE & MAXWELL B. HOPE II (LOT 2)	2			9186	8.28 AC M/L

Location/Address of Property Being Conveyed (2): Mt. Hebron Road, Keedysville, Maryland 21756

Other Property Identifiers (if applicable): | Water Meter Account No.:

Residential or Non-Residential ☑ | Fee Simple ☑ or Ground Rent | Amount:

Partial Conveyance? ☑ Yes ☐ No | Description/Amt. of SqFt/Acreage Transferred: Lot 2, Mt. Hebron Road, Keedysville, MD 21756

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Maxwell B. Hope II and	Benjamin N. Estes
M. Yvonne Hope, his wife	
Doc. 1 – Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 – Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 – Grantee(s) Name(s)	Doc. 2 – Grantee(s) Name(s)
Benjamin N. Estes	MidAtlantic Farm Credit, ACA

New Owner's (Grantee) Mailing Address: Benjamin N. Estes, 22 Mt. Hebron Road, Keedysville, Maryland 21756

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)
	James D. Aird and Martin L. Goozman, Trustees

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Tiffany A. Reiff, Esquire
Firm RT&A, Inc., t/a Record Title & Abstract
Address: 120 E. Oak Ridge Dr. #400
Hagerstown, MD 21740 Phone: (301) 766-4966

☐ Return to Contact Person
☐ Hold for Pickup
☑ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☑ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☑ No Does transfer include personal property? If yes, identify:
☐ Yes ☑ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Space Reserved for County Validation

Assessment Use Only – Do Not Write Below This Line

Terminal Verification | Agricultural Verification | Whole | Part | Tran. Process Verification
Transfer Number | Date Received: | Deed Reference: | Assigned Property No.:

Year	20	20	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: *White – Clerk's Office* *Pink – Office of Finance* *AOC-CC 300 (4/05)* *Canary – SDAT* *Goldenrod – Preparer*

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 4491, p. 0103, MSA_CE18_4416. Date available 03/19/2013. Printed 05/10/2021.

BOOK: 5726 PAGE: 224 E-FILED; Washington Circuit Court
Docket: 5/12/2021 3:16 PM; Submission: 5/12/2021 3:16 PM

Olde Towne Title, Inc.
File No. **OT-13228AH**
Tax ID # **19-002578**

This Deed, made this 10th day of April, 2018, by and between **David W. Hutzell and Mark H. Hutzell, Personal Representatives**, of the Estate of Mary Jane Hutzell, who departed this Earth on or about September 22, 2014, surviving Tenant by the Entirety of Harry C. Hutzell, Jr., who departed this Earth on or about January 11, 1992, GRANTOR, and **Uncle Eddies Brokedown Palace LLC**, GRANTEE.

Whereas, on December 19, 2014, the Orphans' Court of Washington County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to David W. Hutzell and Mark H. Hutzell as Personal Representatives of the Estate of the Decedent in Estate No. 70412

Whereas, Grantors in the capacity of Personal Representatives of the Estate of the Decedent has complete and full power and authority by law to grant and convey the entire fee simple interest in the hereinafter described property; and

Whereas, as part of the administration of the Estate of the Decedent, Grantors desire to convey the entire fee simple estate in the hereinafter described property to the Grantee.

- Witnesseth –

That in consideration of the sum of Seventy-Seven Thousand and 00/100 Dollars ($77,000.00), which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt of which is hereby acknowledged, the said Grantors as Personal Representatives of the Estate of the Decedent, do hereby grant and convey to the said Grantee, as sole owner, in fee simple, all that lot of ground situate in the County of Washington, State of Maryland and described as follows, that is to say:

Situate along the northeast side of the Old Washington County Railroad Tracks at the end of Antietam Drive in the Town of Keedysville, Election District No. 19, Washington County, Maryland and being more particularly described in accordance with a survey dated April 2018 by Frederick, Seibert and Associates, Inc. as follows:

Beginning at a point on the northeasterly side of the lands of the Maryland Natural Resources (Liber 1015, folio 796), said lands of the Natural Resources previously being the Washington County Railroad and said point of beginning being located at the end of the third line of Parcel No. 2 of the lands conveyed by The Estate of Mary Jane Hutzell to Carl French by deed dated August 29, 2017 and recorded at Liber 5596, folio 488 among the Washington County Land Records; said Parcel No. 2 also being further shown on a drawing attached to a deed recorded at Deed book 143, page 381 among the Washington County Land Records, thence leaving the lands of the Maryland Natural Resources and running with the third and second lines of the above referenced deed and running in a clockwise direction and with corrected bearings and distances to match the monumentation and along lands now or formerly of Carl French (Liber 5596, Folio 488) N 42°34'12" E 97.38 feet to a stone by a large Walnut Tree, thence N 14°46'18" E 52.51 feet to a stone, thence along lands of Bryan C. Smith (Liber 4861, folio 41), S 61°15'10" E 50.04 feet to a point, thence S 35°33'19" E 69.11 feet to a point, thence N 90° E 56.00 feet to the foot of a rock cliff, thence N 29°26'50" E 316.02 feet to a tree on the bank with old fence, thence along the top of the bank, N 88°08'13" E 50.00 feet to a point in the fence line, thence
S 75°45'46" E 47.73 feet to intersect the line of Benjamin Estes (Liber 4491, Folio 100), thence along Benjamin Estes, S 55°03'22" E 55.83 feet to an old corner fence post, thence running with the old fence line, S 0°18'05" E 57.27 feet to a fence post, thence S 3°47'39" W 203.44 feet to a point in or near the Little Antietam Creek, thence S 34°59'35" W 148.50 feet to a point, thence along the creek and leaving said creek, S 25°59'35" W 269.59 feet to a point intersecting the Maryland Natural Resources (Liber 1015, folio 796) and previously being the Western Maryland Railroad, thence running with the lands of the Maryland Natural Resources, N 52°06'10" W 40.88 feet to a point, thence N 33°02'26" W 100.38 feet to a point, thence N 39°12'57" W 100.02 feet to a point, thence N 41°09'39" W 100.15 feet to a point, thence N 46°35'58" W 101.13 feet to a point, thence crossing over the existing driveway serving the herein described property, N 31°27'09" W 20.29 feet to the place of beginning;

Containing 3.81 acres of land more or less;

Exhibit 5

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0224, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

Said lands are conveyed subject to and together with any conditions, restrictions, easements or rights-of-way of record and applicable thereto.

Said lands intended on being all of the remaining lands as conveyed by Ivan S. Hammond and Virginia Hammond, his wife to Harry C. Hutzell Jr. and Mary Jane Hutzell, his wife by deed dated May 20, 1964 and recorded at Liber 408, folio 137 among the Land Records of Washington County, Maryland.

The improvements thereon being known as 28 Antietam Drive, Keedysville, Maryland, 21756.

Being the same property described in Liber 408 at Folio 137.

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Uncle Eddies Brokedown Palace LLC, as sole owner, in fee simple.

Subject to and together with all restrictions, covenants, conditions, easements and rights of way of record.

And Grantors do hereby covenant to execute such further assurances of the same as may be requisite.

The undersigned certify that it is resident(s) of the State of Maryland, or that this was their primary residence, and therefore is exempt from the tax withholding requirements of Section 10-912 of the Tax General Article of the Annotated Code of Maryland.

In Witness Whereof, Grantor has caused this Deed to be properly executed and sealed the day and year first above written.

By: David W Hutzell (SEAL)
David W. Hutzell, Personal Representative of the Estate of Mary Jane Hutzell

By: Mark H Hutzell (SEAL)
Mark H. Hutzell, Personal Representative of the Estate of Mary Jane Hutzell

STATE OF MARYLAND }
COUNTY OF WASHINGTON } ss

I hereby certify that on this 10th day of April, 2018 before me, the undersigned officer, a Notary Public in and for the State aforesaid, personally appeared David W. Hutzell and Mark H. Hutzell, known to me or satisfactorily proven to be the persons whose names are subscribed to the within instrument, and acknowledged themselves to be the Personal Representatives of the Estate of Mary Jane Hutzell and who, in my presence, signed and sealed the foregoing Deed and acknowledged it to be their act and deed as Personal Representatives of the foregoing Estate, giving oath under penalties of perjury that the consideration recited herein is correct.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

R.J. WITTHAUS NOTARY PUBLIC FREDERICK CO. MD

R.J. WITTHAUS
Notary Public, State of Maryland
County of Frederick
My Commission Expires Dec 21, 2019

Notary Public

My Commission Expires: _____

TODD L. HERSHEY, TREASURER
TAXES PAID: April 11, 2018 JM

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0225, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

AFTER RECORDING, PLEASE RETURN TO:
Uncle Eddies Brokedown Palace LLC
308 W. Chapline Street
Sharpsburg, MD 21782

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0226, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

THIS IS TO CERTIFY that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland.

Allison Fortmann Bailey, Attorney

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0227, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

BOOK: 5726 PAGE: 228

MARYLAND FORM
WH-AR

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

2018

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor Estate of Mary Jane Hutzell

2. Reasons for Exemption

Resident Status

☐ As of the date this form is signed, I, Transferor, am a resident of the State of Maryland.

☒ Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR)03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence

☐ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 (principal residence for 2 (two) of the last 5 (five) years) and is currently recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness

Name **Date

Signature

3b. Entity Transferors

Witness/Attest

ESTATE OF MARY JANE HUTZELL
Name of Entity

David W Hutzell
By

David W. Hutzell 4/10/18
Name **Date

Personal Representative
Title

** Form must be dated to be valid.

Note: Form is only valid if recordation occurs within 60 days of execution of this form.

File No. OT-13228AH Re: 28 Antietam Drive, Keedysville, MD 21756

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0228, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

MARYLAND FORM
WH-AR

Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate Affidavit of Residence or Principal Residence

2018

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor Estate of Mary Jane Hutzell

2. Reasons for Exemption

Resident Status

☐ As of the date this form is signed, I, Transferor, am a resident of the State of Maryland.

☒ Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR)03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence

☐ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 (principal residence for 2 (two) of the last 5 (five) years) and is currently recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness

Name **Date

Signature

3b. Entity Transferors

Witness/Attest

ESTATE OF MARY JANE HUTZELL
Name of Entity

Mark H Hutzell
By

Mark H. Hutzell 4-10-2018
Name **Date

Personal Representative
Title

** Form must be dated to be valid.

Note: Form is only valid if recordation occurs within 60 days of execution of this form.

File No. OT-13228AH Re: 28 Antietam Drive, Keedysville, MD 21756

18-49

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0229, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

BOOK: 5726 PAGE: 230

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LR - Deed (w Taxes)
Recording Fee - ALL
                    20.00
Name: Uncle Eddies
Ref:
LR - County Transfer
Tax - linked     135.00
LR - Surcharge -
linked           40.00
LR - Recordation Tax -
linked          585.20
LR - State Transfer
Tax - linked     385.00
LR - NR Tax - lkd 0.00
=======================
SubTotal:      1,165.20
=======================
Total:         1,165.20
04/11/2018  02:10
                  CC21-MAW
#10153630 CC0403 -
Washington
County/CC04.03.01 -
Register 01
```

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0230, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

This page not to be counted in calculating Recording Fee

Clerk of Circuit Court
Washington County, Maryland
Dennis J. Weaver, Clerk
24 Summit Avenue
Hagerstown, MD 21740
301-790-7991

For Clerks Use Only

Improvement Fee	40.00
Recording Fee	20.00
County Transfer Tax	135.00
Recordation Tax	585.20
State Transfer Tax	385.00
Non-Resident Tax	
TOTAL	1165.20

BOOK: 5726 PAGE: 231

State of Maryland

☐ **Baltimore City** ☒ **County:** Washington

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only–All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

X Deed / Deed of Trust	☐ Mortgage / Lease	☐ Other	☐ Other

2 Conveyance Type Check Box

X Improved Sale Arms-Length *[1]*	☐ Unimproved Sale Arms-Length *[2]*	☐ Multiple Accounts Arms-Length *[3]*	☐ Not an Arms-Length Sale *[9]*

3 Tax Exemptions (if applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 77,000.00	Transfer Tax Consideration	$
Any New Mortgage	$	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount −	$
Other:	$	Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
		X ( ) per $500 =	$
Full Cash Value:	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 40.00	$
State Recordation Tax	$ 585.20	$
State Transfer Tax	$ 385.00	$
County Transfer Tax	$ 135.00	$
Other	$	$
Other	$	$

Agent:

Tax Bill:

C.B. Credit:

Ag. Tax/Other:

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
	19-002578	408/137			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)
				408/137	

Location/Address of Property Being Conveyed (2)

28 Antietam Drive, Keedysville, MD 21756

Other Property Identifiers (if applicable)	Water Meter Account No.

Residential [X] **or Non-Residential** [ ] **Fee Simple** [X] **or Ground Rent** [ ] **Amount:** N/A

Partial Conveyance? [ ] Yes [X] No Description/Amt. of SqFt/Acreage Transferred: N/A

If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Estate of Mary Jane Hutzell	
Doc. 1 – Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 – Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 – Grantee(s) Name(s)	Doc. 2 – Grantee(s) Name(s)
Uncle Eddies Brokedown Palace LLC	

New Owner's (Grantee) Mailing Address

308 W. Chapline Street, Sharpsburg, MD 21782

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Alex Hahn

Firm Olde Towne Title, Inc.

Address: 1025 Mt. Aetna Road

Hagerstown, MD 21740 Phone: (301) 739-1222

☐ Return to Contact Person

☐ Hold for Pickup

☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?

☐ Yes ☒ No Does transfer include personal property? If yes, identify:

☒ Yes ☐ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Space Reserved for County Validation

Assessment Use Only – Do Not Write Below This Line

Terminal Verification Agricultural Verification Whole Part Tran. Process Verification

Transfer Number Date Received: Deed Reference: Assigned Property No.:

Year	20	20	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Buildings			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: ☐ *Clerk's Office* ☐ *Office of Finance* ☐ *SDAT* ☐ *Preparer*

AOC-CC-300 (5/2007)

OT-13228AH

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 5726, p. 0231, MSA_CE18_5678. Date available 04/13/2018. Printed 05/10/2021.

DELIVERED MAR - 1991

00984 01002

E-FILED; Washington Circuit Court
Docket: 5/12/2021 3:16 PM; Submission: 5/12/2021 3:16 PM

1002

After recordation please deliver to:
Western Maryland Title Services, Inc.
125 W Washington Street
Hagerstown, Maryland 21740

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

DEED 14.00
POSTAGE .50
24.50

Received for Record: Feb. 27, 1991
at 4:20 o'clock P. .M.
Liber 984, folio

THIS CONFIRMATORY DEED, Made this 13th day of November, 1990, by Ellis G. Remsburg and Alice V. Hockenberry, Trustees under a Trust Agreement dated August 20, 1984, hereinafter referred to as Grantors.

WHEREAS, on June 28, 1990 the Grantors conveyed unto the Grantees certain parcels of land situate along both sides of Mt. Hebron Road in Election District No. 19, Washington County, Maryland, by deed dated June 28, 1990 and recorded in Liber 960, folio 502 among the Land Records of said County; and

WHEREAS, since the aforesaid conveyance, the property has been surveyed, and the Grantors and Grantees desire to confirm the conveyance with the new survey description.

WITNESSETH: That for and in consideration of the premises and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Grantors do hereby grant and convey and confirm unto Richard M. Jolles and Ann P. Matheson, his wife, all those two (2) tracts or parcels of land, together with the improvements thereon, and all the rights, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, situate on both sides of Mt. Hebron Road in Election District No. 19, Washington County, Maryland, and being more particularly described on Schedule A attached hereto.

The above-described property is conveyed subject to all conditions, restrictions, easements and rights of way of record applicable thereto.

WITNESS the hands and seals of the said Grantors.

WITNESS:

Yvonne R. Craig

Ellis G. Remsburg (SEAL)
Ellis G. Remsburg, Trustee
under a Trust Agreement dated
August 20, 1984

Alice V. Hockenberry (SEAL)
Alice V. Hockenberry, Trustee
under a Trust Agreement dated
August 20, 1984

Recorded By
Western Maryland Title Services, Inc.
Document No. 1 of 2

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 984, p. 1002, MSA_CE18_934. Date available 09/28/2005. Printed 04/26/2021.

Exhibit 12

00984 01003

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

STATE OF ~~MARYLAND~~ West Virginia, COUNTY OF ~~WASHINGTON~~ Berkeley, To-Wit:

I HEREBY CERTIFY, That on this 13th day of November, 1990, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Ellis G. Remsburg and Alice V. Hockenberry, Trustees under a Trust Agreement dated August 20, 1984 and did each acknowledge the aforegoing deed to be their act and deed and that there was no monetary consideration for the execution of this deed.

Witness my hand and Official Notarial Seal.

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
PATRICIA A. [illegible]
[illegible]
Martinsburg, WV 25401

Patricia A. Nusewarner
Notary Public

My Commission Expires: July 2, 1999

THIS IS TO CERTIFY, That the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Kent N. Oliver, Attorney

MAIL TO: Richard M. Jolles
20 Mt. Hebron Rd.
Keedysville MD 21756

AGRICULTURE TAX —
ACREAGE
CLERK Brenda Cadell

TAXES WAIVED
FEB 27 1991
Todd L. Hershey, Treasurer
MB

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Washington County
B. Cadell 2-27-91
By Date

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 984, p. 1003, MSA_CE18_934. Date available 09/28/2005. Printed 04/26/2021.

00984 01004
CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

SCHEDULE A

All those lots or parcels of land, together with the improvements thereon, and all the rights, ways, waters, privileges and appurtenances thereunto belonging or in anywise appertaining, situate on both sides of Mt. Hebron Road approximately 1/4 mile southeast of its intersection with North Main Street in the Town of Keedysville, Election District 19, Washington County, Maryland and being more particularly described in accordance with a survey by Frederick, Seibert & Associates, Inc. as follows:

PARCEL 1: Beginning for the outline thereof at an iron pin and cap set at the intersection of the south margin of Mt. Hebron Road and the southeast margin of Bell Lane, running thence with the south margin of Mt. Hebron Road South 63 degrees 30 minutes 08 seconds East 338.58 feet to a point, thence South 65 degrees 52 minutes 53 seconds East 568.51 feet to an iron pin and cap set, thence North 83 degrees 18 minutes 44 seconds East 110.17 feet to a point in the fourth or North 79 degrees 31 minutes 07 seconds West 330.00 feet line of the deed to Charles C. Danner (Liber 809, folio 425) running thence with part of the fourth line reversed South 79 degrees 31 minutes 07 seconds East 217.94 feet to an iron pin and cap set, thence along lands of Roger Burtner (Liber 756, folio 137) and John T. Burtner (Liber 756, folio 140) South 15 degrees 17 minutes 58 seconds East 119.50 feet to an iron pin and cap set, thence along the centerline of the existing lane, (Mt. Hebron Road) South 10 degrees 57 minutes 21 seconds West 232.83 feet to a point, thence leaving said centerline South 58 degrees 19 minutes 59 seconds West 14.73 feet to an iron pin and cap set at the end of a stone row, running thence along other lands of Ellis G. Remsburg South 58 degrees 19 minutes 59 seconds West 398.87 feet to an iron rod found at the end of a stone row, thence with said stone row and lands of the Mayor and Council of Keedysville (Liber 332, folio 50) North 47 degrees 05 minutes 40 seconds West 116.96 feet to an iron pin and cap set at the end of said stone row, thence North 20 degrees 55 minutes 47 seconds West 157.06 feet to an iron pin and cap set, thence along other lands of the Mayor and Council of Keedysville (Liber 332, folio 49 and Liber 348, folio 8) North 43 degrees 29 minutes 49 seconds East 26.71 feet to a concrete monument found, thence North 57 degrees 06 minutes 05 seconds East 468.15 feet to a concrete monument found on the south side of the existing lane, thence North 64 degrees 39 minutes 45 seconds West 142.49 feet to a point in the stream, thence at or near the centerline of said stream South 53 degrees 30 minutes 09 seconds West 73.92 feet to a point, thence South 80 degrees 52 minutes 36 seconds West 86.79 feet to a point, thence South 55 degrees 22 minutes 15 seconds West 190.00 feet to a point, thence South 55 degrees 04 minutes 15 seconds West 106.00 feet to a point, thence leaving said stream South 81 degrees 45 minutes 37 seconds West 229.29 feet to an iron pin

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0098L 01005
CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

and cap set, thence along lands of the Mayor and Council of Keedysville (Liber 332, folio 50) and lands of Austin Flook (Liber 855, folio 1074) South 41 degrees 22 minutes 59 seconds West 586.94 feet to a corner fenceline tree, thence South 53 degrees 33 minutes 31 seconds East 43.92 feet to the intersection of a stone row and post and wire fenceline, thence along lands of Nicholas Diavatis (Liber 456, folio 14) South 23 degrees 45 minutes 25 seconds West 315.15 feet to an iron pin and cap set, thence South 11 degrees 29 seconds 47 minutes West 86.08 feet to a corner fencepost, thence along the right of way of the abandoned Baltimore and Ohio Railroad and crossing the Little Antietam Creek North 37 degrees 15 minutes 31 seconds West 279.21 feet to an iron pin and cap set, thence along the west side of said creek and along lands of Harry C. Hutzell, Jr. (Liber 408, folio 137) North 25 degrees 03 minutes 21 seconds East 280.50 feet to a point, thence North 34 degrees 03 minutes 21 seconds East 148.50 feet to a point, thence North 2 degrees 51 minutes 25 seconds East 203.44 feet to a fence post, thence North 1 degrees 14 minutes 19 seconds West 57.27 feet to a fence post, thence North 55 degrees 59 minutes 35 seconds West 55.83 feet to a blazed fenceline tree, thence crossing the Little Antietam Creek North 22 degrees 50 minutes 44 seconds East 78.38 feet to an iron pin and cap set, thence South 87 degrees 23 minutes 59 seconds West 113.20 feet to an iron pin and cap set at the end of the third or North 37 degrees 28 minutes East 233.62 feet line of Parcel 1 of the deed of Bryan C. Smith (Liber 888, folio 1015), thence with the fourth line of said deed North 3 degrees 39 minutes 44 seconds East 87.00 feet to a point in a stone row, thence along lands of Vernon P. Hammond North 4 degrees 00 minutes 34 seconds East 209.86 feet to an iron pin and cap set, thence along lands of T.W. Adams (Liber 919, folio 533) North 41 degrees 52 minutes 50 seconds East 136.13 feet to a corner fence post, thence North 39 degrees 17 minutes 16 seconds West 32.00 feet to a point in the southeast margin of Bell Lane, thence along said margin North 55 degrees 28 minutes 56 seconds East 226.45 feet to the place of beginning; CONTAINING 19.60 acres of land, more or less;

Said lands being all of Tracts 'A' and 'B' of Parcel 1 of the deed from Olive C. Remsburg to Ellis G. Remsburg and Alice B. Hockenberry, Trustee, by deed dated August 20, 1984 and recorded in Liber 769, folio 199 among the Land Records of Washington County, Maryland.

PARCEL 2: Beginning at an iron pin and cap set at the end of the fourth or North 79 degrees 31 minutes 07 seconds West 330.00 feet line of the deed from Jennifer D. Butts to Charles C. Danner and Patricia Ann Danner, his wife, by deed dated May 5, 1986 and recorded in Liber 809, folio 425 among the Land Records of Washington County, Maryland, running thence with part of the fifth line of said deed North 9 degrees 28 minutes 53 seconds East 750.70 feet to a point, thence running North 73 degrees 27 minutes 27 seconds West 290.69 feet to a corner fence

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00984 01006
CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

post, thence South 44 degrees 09 minutes 40 seconds West 195.11 feet to a fence post, thence along the southeast margin of Mt. View Lane South 48 degrees 45 minutes 33 seconds West 342.63 feet to a point, thence along lands of Michael T. Swiger (Liber 804, folio 548) and Franklin J. Shifflet (Liber 541, folio 818) South 63 degrees 42 minutes 25 seconds East 208.54 feet to a metal fence post, thence South 46 degrees 09 minutes 35 seconds West 200.00 feet to an iron pin and cap set in the north margin of Mt. Hebron Road, thence with said margin South 65 degrees 52 minutes 53 seconds East 554.23 feet to the place of beginning; CONTAINING 7.57 acres of land, more or less;

Said lands being all of Parcel 2 of the deed from Olive C. Remsburg to Ellis G. Remsburg and Alice V. Hockenberry, Trustees, by deed dated August 20, 1984 and recorded in Liber 769, folio 199 among the Land Records of Washington County, Maryland.

PARCEL 1 AND PARCEL 2 HEREIN BEING all of the same lands and property which were intended to be conveyed unto Richard M. Jolles and Ann P. Matheson, his wife, by Ellis G. Remsburg and Alice V. Hockenberry, Trustees, by deed dated June 28, 1990 and recorded in Liber 960, folio 502 among the Land Records of Washington County, Maryland.

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 984, p. 1006, MSA_CE18_934. Date available 09/28/2005. Printed 04/26/2021.

IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,

Plaintiff,

v.

JUSTIN HOLDER,

Defendants.

Case No.: C-21-CV-20-000430

DEPOSITION OF FREDERIC FREDERICK,

ZOOM VIDEOCONFERENCE

Tuesday, April 27, 2021

9:00 a.m.

Atkinson-Baker, a Veritext Company

(800) 288-3376

www.depo.com

Reported by: Sydney Crawford, RPR

File No.: AF03233

both be Deena Holder and the southwestern area here?

A I believe so.

Q Okay. And if I was to say the yellow area would be an area we discussed as deed overlap previously, would that be accurate?

A Yes.

Q Okay. All right. So if I wanted to just kind of give somebody a rough idea of the land depicted on this plat that was the deed overlap area, Deena Holder's property, and Uncle Eddies, would it be fair to say that it starts at the railroad bridge on the east side of the property, follows all the way around the creek to the railroad bridge on the west side of the property, and then follows the old railroad line straight back to the point of the beginning?

MR. NEAL: Objection. Go ahead.

A Well, if we're talking about Uncle Eddies, it starts on the west side of the creek. The deed -- the historic deed said it always started on the west side and the stone near the

west abutment, and then it went -- that -- that deed said it went down the creek and then after a call or two, it went to a stone. It wasn't clear, but that stone, in my opinion, had to be on the west side based on the deed -- historic deeds before Mr. Estes. And then it stayed on the ground. And, Mr. Holder, you may recall I met you out there, and showed you that you didn't own the creek as you go further around the creek beyond Estes. And you approached a neighbor and you were able to acquire that additional land from him so you could own to the creek.

Q So now you would say that Uncle Eddies -- and when you say "me," you meant me as manager of Uncle Eddies; right?

A Yes. Correct. Correct.

Q I know. I just want to specify for everybody else here, too. Okay.

So once Uncle Eddies made the purchase of Parcel 414, we talked about that maybe this meeting you're talking about with us happened maybe late March of 2018, would that be accurate?

calls; does that sound right?

A Yeah. I don't know the exact number, but, yes, where the point is going right there, whatever the number is, it comes all the way around into the creek. Correct. Correct. All the way out to L-10.

Q Okay. And did -- you're very specific in the description that from that point in the creek, we go back into land?

A Yes.

Q Okay. So for the 12 calls we just went down the creek, are -- were you intending them to be a fixed nature, or do they sort of meander as the creek changes?

A Well, that's a matter of law. I can't change it. You know, there is -- there is law that if a creek really changes, you know, the law -- the law can change with it. But I follow the deeds, so I don't --

Q Okay.

A I follow the deeds.

Q Did you believe that the intent of

parcel -- the deed for Parcel 414 was to maintain the creek as the boundary for those 12 calls?

A Well, our new -- our new boundary is for it to be in the creek. Yes, that's what -- that's what you wanted and when I wrote that description, we followed the creek.

Q Okay. And would -- and would you say the creek is -- is the metes and bounds in there?

MR. NEAL: Objection.

A Yes. Someplace in the creek is the metes and bounds between you and Mr. Smith. That was the intent.

Q Okay. And then we go down -- I'm sorry, I'm going back to L10 now. And we're going to make a few calls on land. It looks like, one, two, three, four calls on land, and then you -- you safely go back into Antietam Creek?

MS. JAMES: Objection.

A Correct.

MS. JAMES: You can answer.

A Correct. I believe that to be correct.

MR. HOLDER: Ms. James, what was the

reason for your objection, if you don't mind me asking?

MS. JAMES: You're putting words in his mouth.

MR. HOLDER: I understand. I'll be more direct with the questions. I apologize.

Q So the next -- how many calls until we hit another -- until we get out of the creek here, Mr. Frederick?

A So when you go in the southwest direction to 148.5 on the north side -- correct, on the north side of that or the right side, as I'm looking at it. On the right side, that point is in the creek, and then as you go to the left, that point is going to be either on the edge or very close. That is an area that, you know, maybe part of that bank had washed away. I believe that point is either right on the edge of the bank or in the creek.

Q Okay. And then the next point, where is that point at?

A Then it follows -- you know, it follows

up along there. And it goes up to an iron pin near the west abutment of the bridge crossing the Antietam Creek.

Q And is -- is that call in the creek; is that call on land?

A That call is on land. That was a call in your deed. It said starting in the west -- at a stone at the west abutment on the west side of the creek, and that matched Mr. Remsberg's calls, which just transferred forward, forward, forward. Remsberg, Jolis, Estes, Estes.

Q You're talking about Tommy Remsberg, sir?

A I -- I don't know his first name. I thought it was Ellis.

Q That was Tommy's father. Okay.

So it was a predecessor to Mr. Estes, though?

A That's correct.

Q Okay. And you did this survey work first when you -- when you did Plat 4040, or were you -- was that the first time you had done survey

work in this area?

A In 1990, Mr. Ellis Remsberg asked me to survey his property. He was going to convey it. I believe the conveyance happened before I got to finish the survey. He sold it to, I think, a Richard Jolis. And then Mr. Jolis followed through -- we may have already started. But they had settlement before I could finish because their deed, Jolis' deed matches Remsberg's deed, and then we did the -- we did -- we finished the surveying and we did some subdivision work for Mr. Jolis, where he reconfigured the parcels, you know, to what he wanted to do with them. And if you want to bring up that plat. If I could see that, please.

Q Is that number 4040?

A I believe so, can I see the title? Bottom right-hand corner, can you zoom in on that? Yes, Richard Jolis and then slide it to the -- slide it to the right or -- that's it. Keep sliding. I want to see the date. And right there, '93. So I guess I didn't do the plat work

Q Well, I'm -- what I'm trying to discern is on the 10955 description, you went in the creek and then you were very clear when you came back out on land, but on this deed, you -- you said you went along the railroad, then you went along the west bank of the creek and along the lands of Harry C. Hudsell, but you never really come back out on the -- of the bank or the creek, can you just explain that a little bit?

A I do come back on the very next call.

Q Okay.

A So if you look at the previous one that you and I were looking at where -- the 140.50 feet, I told you one of those corners, I believe, was in the creek, and the other is either right on the edge of the bank or in the creek. So let's go to the -- and that's that north 34-03-21 east 148.50 feet, and I say "to a point," because we didn't set the corners at that time yet, and I didn't know if it was going to be exactly in the creek or on the -- on the bank, so we just called it to a point.

But then the next call, this is -- this is the importance of that, one of your previous exhibits where you highlighted it in yellow. The next call thence north 2 degrees, 51 minutes, 25 seconds east 203.44 feet to a fence post. So that fence post is on land, of course, and it's on the west side of the creek.

Thence north 1-14-19 west, 57.27 feet to a fence post. Thence north 55-59-35 west, 55.83 feet to a blazed fence line tree.

Now, that's important to surveyors, because we didn't place it. It was placed a long time ago and it seemed very obvious to me that the -- the Remsbergs or predecessors to the Remsbergs had known that they went across the creek. Their deed actually called -- if you go to their deed, it was totally on the east side and then it came down to the creek and then it says, "thence crossing the creek," and it went across the creek.

And then it followed a couple courses until it went, it didn't say where, but it

actually went back into the water.

Q Okay.

A So there's no doubt that their deed said they went across the creek to the west bank, and we found evidence that blazed -- blazed fence line tree over there and fence line back in 1990.

Q Okay. I'm just going to try to go through this a little bit. So when you say "blaze," can you just explain blaze a little bit for me, please?

A Yes. Back in the day and still today, it's a -- it's a method that surveyors would take a sharp ax or a machete and they would strip off a little segment of bark, a little segment being about, you know, anywhere from four to eight inches and they would put a strike there, because it would create a scar in the tree.

And it would indicate that a surveyor was marking that as the corner is here or very close to here.

Q Okay. And then I had two questions on the fence posts above and I'm going to -- we had

So when I have a deed and I'm doing a boundary survey, I use the most current deed of record, because that is what the previous person conveyed to the person that I'm working for. I use the recent deed of record.

Q If a deed in the chain of the Estes title, earlier than the one you looked at, called for the boundary to be Little Antietam Creek, would you be able to survey that, would you be able to figure out where that boundary was?

A I believe so. Yes, if it called for the creek, but I would want somebody to explain to me why it was subsequently and more recently changed to say, "Thence crossing the creek." Somebody did something to make it more accurate, you know, to define it better to say, "thence crossing the creek."

And then when I have the adjoining deed saying it starts in the west bank, you know, and thence into the creek, and a course or two that don't call for anything, and thence to a stone, and the angle leans it to the west side, all the

evidence to this surveyor proves very strongly that it -- both parties knew that they owned to the west -- to the west side of the creek. "Both parties," being before 2018.

Q Was it your -- was it your firm in 1990 that changed the monuments to the fence and the blazed tree from the prior monuments?

A Yes. It was a more recent survey, a more accurate survey, and we were trying to do our best in following the footsteps of the original surveyor and the intent of -- of that deed.

Q So when you refer to the adjoiner's deed when you were answering Mr. Holder's questions about this, and that his historical deed called to the blaze tree and the fence, you were talking about the blazed tree and the fence monuments that your firm created in 1990; correct?

A We didn't create them. We found them.

Q Well, you added them to the description. For the first time ever, you added them to the descriptions as monuments?

A That's correct.

last point shared between the Estes and Uncle Eddies property?

A Yes.

Q Are there any other boundary lines of the Uncle Eddies/Holder properties that abut the Estes property?

A None.

Q And the -- the 269.59 line, that is the length of the line after adjustment for the DNR survey of the railroad?

A Correct.

Q All right. And I'm going to just go ahead and call this L10 to the bridge line, the shared boundary line, rather than repeat that whole statement over and over again. With that said.

Is it your opinion to a reasonable degree of professional certainty that the shared boundary line shown on this plat, number 10955, accurately depicts the actual boundary lines between the Estes and the Holder/Uncle Eddies property line?

A That is my professional opinion.

Q All right. I'm pulling up another document, please let me know when you see it. It should be labeled Greivell letter.

A I can see it now.

Q I think I spelled it wrong, but you get the idea. Have you seen this document before?

A I just saw it for the very first -- this morning.

Q So is it fair to say you haven't formed any opinions with whether you agree or disagree with Mr. Grievell's opinions?

A I disagree, after reading it. You know, and, of course, I was called by the board and I had to defend myself.

(Simultaneous cross-talking.)

Q Okay. Do you -- would you -- go ahead --

A That's a year old. About. That's roughly a year old. And I've already had to provide the board with, you know, all of my findings, etc.

court when he was against Mr. Estes the first time.

When -- when he was looking for something that would -- you know, in his opinion, he always, I guess, thought he went to the creek. And so I wrote that letter with the understanding that he and Mr. Estes were going to try to work things out.

Q All right. Now, the letter you sent referred to a deed at liber 454, folio 229.

Is this the deed you were talking about?

A I think they gave me another older one that said -- it was like a W -- I think there was an older one than that. But that is one that I did look at when -- that's the one they gave me the first time, that -- that I tried to plot to see how it could possibly fit in there and would it -- would it change any -- you know, decision or could it be plausible that maybe it went down the center line.

We do know that some places, it goes down -- I'm not going to say down the center line

of the creek -- but goes into the creek, even my survey shows that some of it goes into the creek.

Q I think you testified about this before, but what is the significance between a blazed tree?

A A blazed tree is a -- a marking for a surveyor when we see them that tells us that some surveyor before us, probably a surveyor -- remember back in the 1800s and early 1900s, the term "surveyor" doesn't mean you were a licensed surveyor. You know, there was no licensed -- I don't know when the licensing board got started.

But there's -- in the olden days, there was a lot of people that did not go to college, that did not actually have a professional license, but yet did survey. And so somebody put a blaze on a tree and that's an indication to a surveyor that somebody is saying that tree's a witness to a property corner.

Q Mr. Frederick, thank you. I have nothing further right now. I guess I'll leave it open to redirect from Mr. Holder or Mr. Ruble.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

AFFIDAVIT OF JOHN DOWLING, ESQ.

COMES NOW, the Affiant, and hereby swears and affirms under penalty of perjury and upon personal knowledge that the following is true and correct:

1. My name is John Dowling. I am over the age of eighteen (18) and am competent to testify.

2. My *curriculum vitae* is attached as Exhibit A, which accurately sets forth my education, experience, and professional credentials.

3. I have been retained in this matter by Plaintiff Benjamin Estes to serve as an expert in the field of land surveying and title to real property, and to serve as a rebuttal expert to the opinions of Defendants' expert George Nagel.

4. I have reviewed the deeds and recorded surveys for the Estes Property and the Holder Property.

5. Based on my review of these records, and my professional background, training, and experience, to a reasonable degree of probability in the field of land surveying and title to real property, the boundary line between the Estes Property and the Holder Property is accurately described in the "Preliminary/Final Plat of Subdivision of Lot 2 for M. Yvonne & Maxwell B.

Exhibit 14

Hope, II," prepared by Frederick, Seibert & Associates, Inc., dated September 27, 2006, and recorded in the Plat folio 9186 among the Plat Records for Washington County.

6. My opinion that the shared boundary line is consistent with Plat 9186 is based on the fact that the title deeds contain specific courses and distances for the shared boundary line, the title deed does not indicate that the shared boundary line is "binding" on Little Antietam Creek, the existence of the fence line, and the location of the starting point of the description.

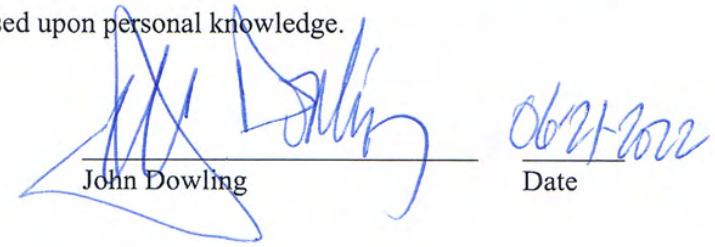
7. I reviewed the survey prepared for Uncle Eddies in August 2021 by Defendants' expert, George Nagel with Fox and Associates, Inc. Based on my review of the records, and my professional background, training, and experience, to a reasonable degree of probability in the field of land surveying and title to real property, Mr. Nagel failed to actually plot the calls contained in Uncle Eddie's deed or the description of the deed, if his location of stone "BQT" is correct.

8. I have superimposed a red line on the Uncle Eddies survey prepared by Mr. Nagel to reflect segments of the Estes Property that is shown in deed 101-583, dated April 2, 1895. (Ex. B). I have superimposed a blue line on the Uncle Eddies survey prepared by Mr. Nagel to reflect segments of the Holder Property, reflected in Uncle Eddies' deed, WMcKK 6-363, dated March 22, 1872, if his S75°44'06" West 129.61 line is the S79° West 7.9 perch line. (*Id.*).

9. The "call" at the end of the North 50 degree, West 73 perch (1204.5 feet) line of 101-583 is to a stone planted on the "west Bank" of the Creek. (*Id.*). The "call" at the end of the South 20 degrees, west 17 perch line is for a stone planted near the west end of a stone abutment, not the stream. (*Id.*).

10. Mr. Nagel did not plot the calls contained in the deed or the description of the deed. The blue line that I had superimposed on the Uncle Eddies property shows where the calls would be if Mr. Nagel had plotted the deed lines if the 129.61 foot line was the 7.9 perch line.

I declare or affirm under the penalties of perjury that the content of the foregoing Affidavit is true and correct and is based upon personal knowledge.



John Dowling

06/21/2022
Date

WASHINGTON COUNTY CIRCUIT COURT (Land Records) KK1 6468, p. 0345, MSA_CE18_6420. Date available 01/06/2021. Printed 03/22/2021.

CONFIRMATORY DEED

THIS CONFIRMATORY DEED, made this 18th day of July, 2020, by and between **David W. Hutzell** and **Mark H. Hutzell, Personal Representatives of the Estate of Mary Jane Hutzell**, who departed this Earth on or about September 22, 2014, surging Tenant by the Entirety of Harry C. Hutzell, Jr., who departed this Earth on or about January 11, 1992, GRANTORS, and **Uncle Eddies Brokedown Palace LLC**, GRANTEE.

WHEREAS, on December 19, 2014, the Orphan's Court of Washington County, State of Maryland (the "Court") granted administration of the Estate of the Decedent to David W. Hutzell and Mark H. Hutzell as Personal Representatives of the E state of the Decedent in Estate No. 70412; and

WHEREAS, Grantors, in the capacity of Personal Representatives of the Estate of the Decedent have and had complete and full power and authority by law to grant and convey the entire fee simple interest in the hereinafter described property; and

WHEREAS, as part of the administration of the Estate of the Decedent, Grantors desired to and did convey the entire fee simple estate in the hereinafter described property to the Grantee by deed dated April 10, 2018, and recorded among the Land Records for Washington County, Maryland at Liber 5726, folio 224 (the "4/10/2018 Deed"); and

WHEREAS, the description of the lands to be conveyed in the 4/10/2018 Deed was made in the said Deed "in accordance with a survey dated April 2018 by Frederick, Seibert and Associates, Inc.," (the "2018 FSA Description"), and

WHEREAS, Grantors and Grantee have discovered that the 2018 FSA Description contained numerous errors and did not fully describe the entire metes and bounds of the lands intended to be conveyed; and

WHEREAS, despite the errors contained in the 2018 FSA Description, in the said 4/10/2018 Deed, we, the Grantors, after reciting the said erroneous 2018 FSA Description, unambiguously stated: "Said lands intended on being all of the remaining lands as conveyed by Ivan S. Hammond and Virginia Hammond, his wife to Harry C. Hutzell Jr. and Mary Jane Hutzell, his wife by deed dated May 20, 1964 and recorded at Liber 408, folio 137 among the Land Records of Washington County, Maryland" (the "5/20/1964 Deed"), and noted the same as "**Being** the same property described in Liber 408 at Folio 137;" and

WHEREAS, to the extent that the erroneous 2018 FSA Description did not evidence an intent to convey all of the same lands as described from in the 5/20/1964 Deed, the Grantors and Grantee now desire to file this Confirmatory Deed to ratify and explicitly confirm that the 4/10/2018 Deed intended to, and did, in fact, convey all that fee simple right, title and interest in the lands to be described herein in a manner that is

Exhibit 15

consistent with the deed and title history of record related to said lands; and

WHEREAS, although the 4/10/2018 Deed did expressly state that said lands were conveyed by said Deed "Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining," the said 4/10/2018 Deed did not expressly identify the perpetual use of the Cost Wagon Road, as further described herein, originating at Cost's Crossing, as further described herein, which was created by deed dated March 22, 1872 when the lands described herein were conveyed from Aaron and Malinda Cost to David Kretzer and recorded in W.McK.K. 6, folio 363 among the land records for Washington County (the "Cost/Kretzer Deed"); and

WHEREAS, the Grantors and Grantee desire by this Confirmatory Deed to declare and confirm expressly that all of the said Grantors' rights title and interest in the perpetual use of the said Cost Wagon Road was intended to, and did, in fact, convey to Grantee by virtue of the 4/10/2018 Deed; and

WHEREAS, the courses and distances described below were designed by the 1872 Cost/Kretzer Deed to convey all of the lands lying situate between the South East boundary of what was formerly the Washington County Railroad and the West Bank of the Little Antietam Creek, as the said Creek flowed at that time; and

WHEREAS, as a result, all of said lands bounding on said Creek were "fast lands" entitled to all the Riparian rights as established under Maryland Law and Common Law; and

WHEREAS, to the extent that the physical locations of the Western banks of said Little Antietam Creek have gradually moved since the time of the Cost/Kretzer Deed due to gradual accretion, reliction, and other natural forces, then by virtue of said Riparian rights, the lands conveyed by every deed since the Cost/Kretzer Deed are hereby now confirmed to include all of the lands lying situtate between the South Eastern boundary of what was formerly the Washington County Railroad and the nearest banks of the said Little Antietam Creek, even though parts of said lands may extend beyond the courses and distances stated in the description below.

- WITNESSETH -

That in consideration of the sum of Seventy-Seven Thousand and 00/100 Dollars ($77,000.00), which included the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt and sufficiency of which were acknowledged in the 4/10/2018 Deed, the said Grantors as Personal Representatives of the Estate of the Decedent, did thereby grant and convey to the said Grantee, as sole owner, in fee simple, **and by this Confirmatory Deed now confirm**, all that lot of ground situate in the County of Washington, State of Maryland and described as follows, that is to say:

WASHINGTON COUNTY CIRCUIT COURT (Land Records) KRI 6468, p. 0346, MSA_CE18_6420. Date available 01/06/2021. Printed 09/22/2021.

All of the following described tract or parcel of land, situate, lying and being in the County of Washington and State of Maryland, and near the town of Keedysville. BEGINNING at a planted stone standing near and in a Northerly direction from the West end of what was formerly the Washington County Rail Road bridge across "Little antietam" where said stream passes through the lands formerly belonging to Jacob Keedy into the lands formerly belonging to Elias Snively and running thence down said Creek North 22 degrees East 17 perches, North 31 degrees East 9 perches, North 10.5 degrees East 11.5 perches, North 19 degrees West 5.5 perches to a planted stone, North 7.5 degrees East 0.5 perches, North 74 degrees West 13 perches, South 74 degrees West 6 perches, North 53.5 degrees West 7.4 perches to a stone, North 13 degrees East 0.9 perches to a stone, North 54 degrees West 10 perches, North 20 degrees West 3 perches into what was formerly a Mill dam, North 35 degrees West 1.8 perches, South 32 degrees West 2 perches, North 80 degrees West 2.8 perches, South 13.75 degrees West until it intersects the outlines of the Washington County Rail Road, thence bounding on the outlines of that road to the place of the beginning, containing 3.75 acres and 36 perches of land, more or less, the same being part of a tract of land called "The Resurvey of Fellfoot Enlarged," and part of a tract of land called "Gordon's Purchase" (sometimes referred to as "Gordin's Purchase" and sometimes referred to as "Gorgon's Purchase").

TOGETHER WITH the use of a wagon road to and from said land commencing at a stone planted on the West margin of the said Washington County Rail Road at what Aaron Cost called his Rail Road crossing ("Cost's Crossing") and running thence along the Western boundaries of said Rail Road South 30.75 degrees East 14 perches to a stone, South 36 degrees East 10.6 perches to what was formerly the lands of Jacob Keedy, thence along the division line between what were the lands of said Aaron Cost and said Jacob Keedy until it intersects the road leading from said Jacob Keedy's house to the County road leading from Keedysville to Martin Eakle's Mill.

BEING the same property conveyed by deed dated March 22, 1872 from Aaron and Malinda Cost, to David Kretzer and recorded in W.McK.K. 6, folio 363 among the land records for Washington County.

SAVING AND EXCEPTING THEREFROM that part of said land containing 80 perches more or less, as conveyed to James Baxter by David Kretzer and wife by deed dated February 21, 1874, and duly recorded in Liber W.McK.K. No. 6, Folio 435, one of the land records of Washington County;

TOGETHER WITH all of the rights, roads, water ways, easements, privileges, riparian rights, past and present, and appurtenances and advantages thereto belonging or in anywise appertaining.

BEING the same property conveyed by deed dated May 20, 1964 from Ivan S. Hammond and Virginia Hammond, his wife to Harry C. Hutzell, and Mary Jane Hutzell, his wife, and recorded in Liber. 408, folio 137 among the land records for Washington County.

WASHINGTON COUNTY CIRCUIT COURT (Land Records) KR1 6468, p. 0347, MSA_CE10_0420. Date available 01/06/2021. Printed 09/22/2021.

BEING the same property conveyed by deed dated October 23, 1961 from Vernon Hammond and Mary Hammond, his wife, Lester Hammond and Jane Hammond, his wife, Patricia Smith and Frank Smith, her husband, Leona Baker, widow, Leila Hammond, widow, Margaret Morgan, unmarried, Donal Hammond, unmarried, all of Washington County in the State of Maryland, Louis Sprankle, of Monmouth County in the State of New Jersey and her husband, Harry Sprankle, of Washington County in the State of Maryland to Ivan S. Hammond and Virginia Hammond, his wife and recorded in Liber. 374, folio 763 among the land records for Washington County.

BEING the same property conveyed by deed dated August 21, 1951 from Clarence L. Mace and Sarah C. Mace, his wife to Frank Allan Hammond and Vernie Ellen Hammond, his wife and recorded in Liber. 265, folio 235 among the land records for Washington County.

BEING the same property conveyed by deed dated December 30, 1937 from Charles L. Flook and Elizabeth A. Flook, his wife to Clarence L. Mace and Sarah C. Mace, his wife and recorded in Liber. 245, folio 75 among the land records for Washington County.

BEING the same property conveyed by deed dated April 20, 1942 from Paul H. Wyand, trustee to Chelo P. Flook and Charles L. Flook as joint tenants with the right of survivorship, and recorded in Liber. 218, folio 608 among the land records for Washington County.

BEING the same property conveyed by deed dated April 20, 1942 from Emory O. Flook and Bessie Flook, his wife, John J. Flook and Inez A. Flook, his wife, Frederick O. Flook and Flossie Flook, his wife,Chelo P. Flook, and Charles L. Flook to Paul H. Wyand, trustee, and recorded in Liber. 218, folio 607 among the land records for Washington County.

BEING the same property conveyed by deed dated March 20, 1920 from Franklin C. Baker and Emma F. Baker, his wife to Martin L. Flook, and recorded in Liber. 157, folio 535 among the land records for Washington County.

BEING the same property conveyed by deed dated March 18, 1920 fromThomas Jamison and Daisy H. Jamison, his wife, to Franklin C. Baker and Emma F. Baker, his wife, and recorded in Liber. 157, folio 108 among the land records for Washington County.

BEING the same property conveyed by deed dated December 28, 1918 from Peter S. Kretzer and Nannie Kretzer, his wife to Thomas Jamison and Daisy H. Jamison, his wife, and recorded in Liber. 154, folio 229 among the land records for Washington County.

BEING the same property conveyed by deed dated January 6, 1908 from Frank G. Wagamon and Leon Youteen, trustee's (2719 trust of david kretzer) to Peter S. Kretzer

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and Nannie Kretzer, his wife, and recorded in Liber. 127, folio 328 among the land records for Washington County.

BEING the same property conveyed by deed dated March 22, 1872 from Aaron and Malinda Cost, (survivior and heir of Samual Cost) to David Kretzer and recorded in W.McK.K. 6, folio 363 among the land records for Washington County.

BEING all of the same property conveyed by deed dated March 5, 1859 from John J. Keedy of Washington county, in the State of Maryland and Mary Ann Keedy of Washington county, in the State of Maryland, his wife to Samual Cost of Washington county, in the State of Maryland and recorded in Liber 14, folio 14 among the land records for Washington County, and part of the same property conveyed by ***Indenture*** dated September 10, 1832 from David Hess of Montgomery county, in the State of Ohio to Samual Cost of Washington county, in the State of Maryland and recorded in NN, folio 520 among the land records for Washington County.

And Grantors do hereby covenant to execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of the Grantors the day and year first above written.

The Estate of Mary Jane Hutzell

David W Hutzell
By: David W. Hutzell
Personal Representative

Mark H Hutzell
By: Mark H. Hutzell
Personal Representative

STATE OF MARYLAND
COUNTY OF WASHINGTON

This document was acknowledged before me on July 18th, 2020
by **David W. Hutzell**, in his capacity as Personal Representative of the Estate of Mary Jane Hutzell to be his/her act.

_____ (SEAL)
Signature of Notary

My Commission Expires: 9/26/2023

STATE OF MARYLAND
COUNTY OF WASHINGTON

Kirk D Hilliard
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
MY COMMISSION EXPIRES September 26, 2023

WASHINGTON COUNTY CIRCUIT COURT (Land Records) MR1 6468, p. 0349, MSA_CE10_0420. Date available 01/06/2021. Printed 09/27/2021.

This document was acknowledged before me on July 18th, 2020
by **Mark H. Hutzell**, in his capacity as Personal Representative of the Estate of Mary Jane Hutzell to be his/her act.

_____ (SEAL)
Signature of Notary

My Commission Expires: 9-26-2023

I hereby certify that the foregoing instrument was prepared by, or under the supervision of, the undersigned, an attorney duly admitted to practice before the Court of Appeals of the State of Maryland.

Adam D. Greivell, Attorney

Mail to:
Uncle Eddies Brohemian Parlace LLC
PO Box 420
Sharpsburg MD 21782

Kirk D Hilliard
NOTARY PUBLIC
MONTGOMERY COUNTY
MARYLAND
MY COMMISSION EXPIRES September 26, 2023

TODD L. HERSHEY, TREASURER
TAXES PAID 12/30/2020
AUTHORIZED BY: TLH
PW

WASHINGTON COUNTY CIRCUIT COURT (Land Records) KRT 6468, p. 0350, MSA_CE10_6420. Date available 01/06/2021. Printed 09/27/2021.

01108 00582

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

Received for Record
at o'clock M.
Liber folio

A 02
POSTGE .50
IMPRFE 2.00
DEED 14.00
A SUB 16.50
06 4286 8-23A10:28
AUG 23 [illegible]

THIS CONFIRMATORY DEED, Made this 15th day of July, 1993, by RICHARD M. JOLLES, of Washington County, State of Maryland, Witnesseth, that:

WHEREAS, by deed dated May 14, 1993, and recorded among the Land Records of Washington County, Maryland, in Liber 1092 , folio 694 , the said Grantor herein intended to convey unto the Grantees herein all the following described real estate; and

WHEREAS, there was an error in the description contained in the last hereinabove referenced deed; and

WHEREAS, the Grantor and Grantees herein desire to correct said erroneous description.

NOW THEREFORE, THIS CONFIRMATORY DEED FURTHER WITNESSETH: That for no monetary consideration, but for other good and valuable considerations, the receipt of which is hereby acknowledged, the said RICHARD M. JOLLES does hereby grant, convey and confirm unto MAXWELL B. HOPE, II and M. YVONNE HOPE, his wife, all that parcel of land situate along the South side of Mount Hebron Road approximately 1/4 mile Southeastward from its intersection with North Main Street in the town of Keedysville in Election District No. 19, Washington County, Maryland, and more particularly described, according to a survey dated March, 1993, and description prepared by Frederick, Seibert & Associates, Inc., as follows:

BEGINNING at an iron pin and cap set along the South margin of Mount Hebron Road, said point being located South 63 degrees 30 minutes 08 seconds East 327.00 feet from the point of beginning of the lands conveyed by Richard M. Jolles and Ann P. Matheson to Richard M. Jolles by deed dated December 16, 1992, and recorded in Liber 1077, folio 442, among the Land Records of Washington County, Maryland, thence running with the remainder of the first line of the above referenced deed South 63 degrees 30 minutes 08 seconds East 11.58 feet to a point, thence South 65 degrees 52 minutes 53 seconds East 568.51 feet to an iron pin and cap set, thence North 83 degrees 18 minutes 44 seconds East 110.17 feet to a point in the fourth or North 79 degrees 31 minutes 07 seconds West 330 feet line of the deed to Charles C. Danner (Liber 809, folio 425), running thence with part of the fourth line reversed South 79 degrees 31 minutes 07 seconds East 217.94 feet to an iron pin and cap set, thence along lands of Roger Burtner (Liber 756, folio 137) and John T. Burtner (Liber 756, folio 140) South 15 degrees 17 minutes 58 seconds East 119.50 feet to an iron pin and cap set, thence along the centerline of the existing lane, (Mt. Hebron Road) South 10 degrees 57 minutes 21 seconds West 232.83 feet to a point, thence leaving said centerline South 58 degrees 19 minutes 59 seconds West 14.73 feet to an iron pin and cap set at the end of a stone row, running thence along other lands of Ellis G. Remsburg South 58 degrees 19 minutes 59 seconds West 398.87 feet to an iron rod found at the end of a stone row, thence with said stone row and lands of the Mayor and Council of Keedysville (Liber 332, folio 50) North 47 degrees 05 minutes 40 seconds West 116.96 feet to an iron pin and cap set at the end of said stone row, thence North 20

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 1108, p. 0582, MSA_CE18_1058. Date available 09/28/2005. Printed 11/27/2021.

Exhibit 16

01108 00583
CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

degrees 55 minutes 47 seconds West 157.06 feet to an iron pin and cap set, thence along other lands of the Mayor and Council of Keedysville (Liber 332, folio 49 and Liber 348, folio 8) North 43 degrees 29 minutes 49 seconds East 26.71 feet to a concrete monument found, thence North 57 degrees 06 minutes 05 seconds East 468.15 feet to a concrete monument found on the South side on the existing lane, thence North 64 degrees 39 minutes 45 seconds West 142.49 feet to a point in the stream, thence at or near the centerline of said stream South 53 degrees 30 minutes 09 seconds West 73.92 feet to a point, thence South 80 degrees 52 minutes 36 seconds West 86.79 feet to a point, thence South 55 degrees 22 minutes 15 seconds West 190.00 feet to a point, thence South 55 degrees 04 minutes 15 seconds West 106.00 feet to a point, thence leaving said stream South 81 degrees 45 minutes 37 seconds West 229.29 feet to an iron pin and cap set, thence along lands of the Mayor and Council of Keedysville (Liber 332, folio 50) and the lands of Austin Flook (Liber 855, folio 1074) South 41 degrees 22 minutes 59 seconds West 586.94 feet to a corner fence line tree, thence South 53 degrees 33 minutes 31 seconds East 43.92 feet to the intersection of a stone row and post and wire fenceline, thence along lands of Nichols Diavatis (Liber 456, folio 14) South 23 degrees 45 minutes 25 seconds West 315.15 feet to an iron pin and cap set, thence South 11 degrees 29 minutes 47 seconds West 86.08 feet to a corner fence post, thence along the right of way of the abandoned Baltimore and Ohio Railroad and crossing the Little Antietam Creek North 37 degrees 15 minutes 31 seconds West 279.21 feet to an iron pin and cap set, thence along the West side of said creek and along the lands of Harry C. Hutzell, Jr. (Liber 408, folio 137) North 25 degrees 03 minutes 21 seconds East 280.50 feet to a point, thence North 34 degrees 03 minutes 21 seconds East 148.50 feet to a point, thence North 2 degrees 51 minutes 25 seconds East 203.44 feet to a fence post, thence North 1 degree 14 minutes 19 seconds West 57.27 feet to a fence post, thence North 55 degrees 59 minutes 35 seconds West 55.83 feet to a blazed fenceline tree, thence North 22 degrees 50 minutes 44 seconds East 40.64 feet to a point in the Little Antietam Creek, thence along or with said creek South 69 degrees 51 minutes 16 seconds East 69.28 feet to a point, thence South 35 degrees 51 minutes 09 seconds East 47.81 feet to a point, thence leaving said creek and running North 16 degrees 43 minutes 24 seconds East 120.18 feet to a point along the east side of an existing stone row, thence running with the East side of said stone row North 77 degrees 13 minutes 11 seconds East 37.29 feet to a point, thence North 51 degrees 33 minutes 34 seconds East 168.00 feet to a point, thence North 39 degrees 45 minutes 46 seconds East 60.90 feet to a point, thence North 54 degrees 29 minutes 50 seconds East 99.33 feet to a point, thence North 18 degrees 51 minutes 44 seconds East 174.03 feet to the point of beginning, said line being incorrectly shown on said plat as being 164.28 feet; CONTAINING 14.80 acres of land, more or less, incorrectly shown on Washington County Plat folio 4040 as 14.82 acres, more or less.

Said lands intended to be all of Lot 1 on a plat entitled "Preliminary Final Plat of Subdivision of Lot 1 for Richard Jolles" prepared by Frederick, Seibert & Associates, Inc., and recorded among the Plat Records of Washington County, Maryland, at Plat folio 4040.

SUBJECT to a deed for a right of way by Olive C. Remsburg, widow, to the Town of Keedysville, dated November 14, 1964, and recorded among the Land Records of Washington County, Maryland, in Liber 419, folio 693.

WASHINGTON COUNTY CIRCUIT COURT (Land Records) DJW 1108, p. 0583, MSA_CE18_1058. Date available 09/28/2005. Printed 11/27/2021.

01108 00584

CLERK OF THE CIRCUIT COURT
WASHINGTON COUNTY

BEING all the same property which was intended to by conveyed unto Maxwell B. Hope, II and M. Yvonne Hope, his wife, by Richard M. Jolles, by deed ated May 14, 1993, and recorded among the Land Records of Washington County, Maryland, in Liber 1092 , folio 694 .

The above described property is hereby conveyed subject to all conditions, restrictions and general notes as more particularly set forth on the aforesaid Plat as well as to any and all other conditions, restrictions, easements and rights of way of record applicable thereto.

And the Grantor herein does hereby covenant that, except as to the aforesaid conditions, restrictions, general notes, easements and rights of way, he will warrant specially the property hereby conveyed and that he will execute such other and further assurances of title as may be legally requisite.

WITNESS the hand and seal of the Grantor.

WITNESS:

Richard M. Jolles (SEAL)
Richard M. Jolles

STATE OF MARYLAND, COUNTY, to-wit:

I HEREBY CERTIFY that on this 27th day of July, 1993, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Richard M. Jolles, known to me to be the person whose name is subscribed to the aforegoing instrument, who did acknowledge that he executed the same for the purposes therein contained; and at the same time he also acknowledged that there is no consideration set forth in said deed.

WITNESS my hand and official Notarial Seal.

Notary Public

My Commission Expires: 8-1-95

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an Attorney, or by a Party to this instrument.

MAILED SEP 1 1993

Robert B. Stone, Attorney

MAIL TO:
Mr. and Mrs. Maxwell B. Hope, II
22 Mt. Hebron Road
Keedysville, MD 21756

AGRICULTURE TAX $ -0-
ACREAGE
CLERK

TAXES WAIVED
AUG 23 1993
TODD L. MURRAY, TREASURER

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Washington County
8-23-93

WASHINGTON COUNTY CIRCUIT COURT (Land Records) [illegible] 1058. Date available 09/28/2005. Printed 11/27/2021.

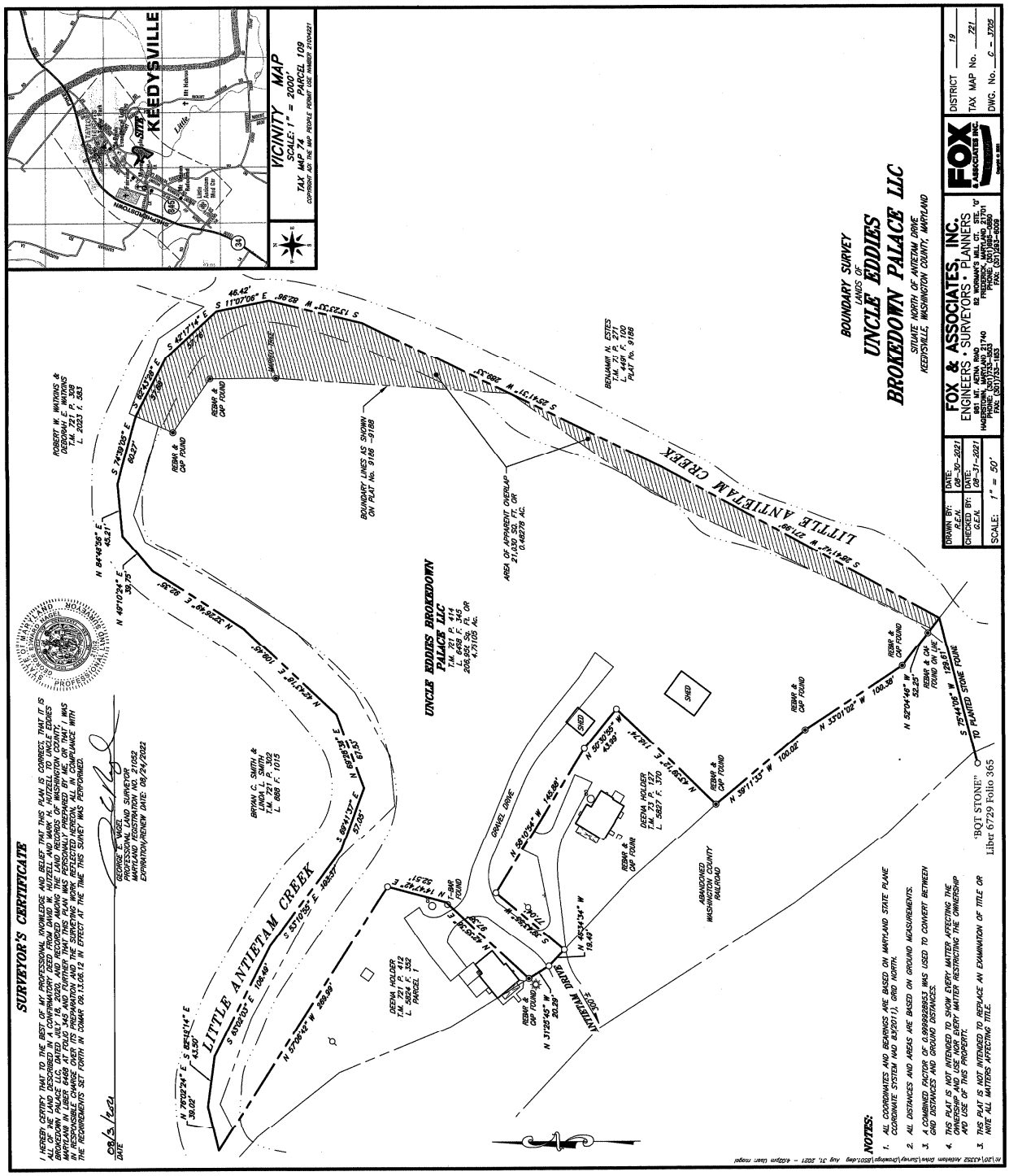
SURVEYOR'S CERTIFICATE
I HEREBY CERTIFY THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF THAT THIS PLAN IS CORRECT, THAT IT IS ALL OF THE LAND DESCRIBED IN A CONFIRMATORY DEED FROM DAVID W. HUTZELL AND MARK H. HUTZELL TO UNCLE EDDIES BROKEDOWN PALACE LLC, DATED JULY 18, 2020, AND RECORDED AMONG THE LAND RECORDS OF WASHINGTON COUNTY, MARYLAND IN LIBER 6729 FOLIO 365 AND THAT I HAVE FOLLOWED THE PROVISIONS OF REGULATION .12 OF THE MINIMUM STANDARDS FOR PROPERTY BOUNDARY SURVEYS IN THE STATE OF MARYLAND. I WAS IN RESPONSIBLE CHARGE OVER THIS PREPARATION AND THE SURVEYING WORK REFLECTED HEREON, ALL IN COMPLIANCE WITH THE REQUIREMENTS SET FORTH IN COMAR 09.13.06.12 IN EFFECT AT THE TIME THIS SURVEY WAS PERFORMED.
GEORGE E. VAGEL
PROFESSIONAL LAND SURVEYOR
MARYLAND REGISTRATION NO. 21052
EXPIRATION/RENEW DATE: 06/24/2022
DATE
VICINITY MAP
SCALE: 1" = 2000'
TAX MAP 74 PARCEL 109
COPYRIGHT AS THE MAP PEOPLE PERMIT USE NUMBER 21004231
KEEDYSVILLE
SMITH
ROBERT W. WATKINS & DEBORAH L. WATKINS T.M. 721 P. 309 L. 2023 F. 563
BRYAN C. SMITH & LINDA L. SMITH T.M. 721 P. 309 L. 885 F. 1015
UNCLE EDDIES BROKEDOWN PALACE LLC T.M. 73 P. 141 L. 6498 F. 345 206,626 Sq. Ft. OR 4.7195 Ac.
DEENA HOLDER T.M. 721 P. 412 L. 3824 F. 332 PARCEL 1
DEENA HOLDER T.M. 73 P. 127 L. 3827 F. 370
BENJAMIN N. ESTES T.M. 73 P. 277 L. 6498 F. 339 PLAT No. 9188
BOUNDARY LINES AS SHOWN ON PLAT No. 9188
AREA OF APPARENT OVERLAP 21,030 SQ. FT. OR 0.48278 AC.
LITTLE ANTIETAM CREEK
ANTIETAM DRIVE
GRAVEL DRIVE
SHED
ABANDONED WASHINGTON COUNTY RAILROAD
REBAR & CAP FOUND
REBAR & CAP FOUND ON LINE
TO PLANTED STONE FOUND
"BQT STONE" Liber 6729 Folio 365
BOUNDARY SURVEY
LANDS OF
UNCLE EDDIES BROKEDOWN PALACE LLC
SITUATE NORTH OF ANTIETAM DRIVE
KEEDYSVILLE, WASHINGTON COUNTY, MARYLAND
NOTES:
1. ALL COORDINATES AND BEARINGS ARE BASED ON MARYLAND STATE PLANE COORDINATE SYSTEM NAD 83/2011, GRID NORTH.
2. ALL DISTANCES AND AREAS ARE BASED ON GROUND MEASUREMENTS.
3. A COMBINED FACTOR OF 0.99992883 WAS USED TO CONVERT BETWEEN GRID DISTANCES AND GROUND DISTANCES.
4. THIS PLAT IS NOT INTENDED TO SHOW EVERY MATTER AFFECTING THE OWNERSHIP AND USE NOR EVERY MATTER RESTRICTING THE OWNERSHIP AND USE OF THIS PROPERTY.
5. THIS PLAT IS NOT INTENDED TO REPLACE AN EXAMINATION OF TITLE OR NOTE ALL MATTERS AFFECTING TITLE.
DRAWN BY: R.E.N. DATE: 08-30-2021
CHECKED BY: E.P.K. DATE: 08-31-2021
SCALE: 1" = 50'
FOX & ASSOCIATES, INC.
ENGINEERS • SURVEYORS • PLANNERS
BOONSBORO, MARYLAND 21713
FREDERICK, MARYLAND 21701
PHONE (301)695-0660
FAX (301)695-0688
DISTRICT 19
TAX MAP No. 721
DWG. No. C - 37109

Exhibit 17

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S REPLY TO DEFENDANT JUSTIN HOLDER'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiff Benjamin Estes, by and through undersigned counsel, files this Reply to Defendant Justin Holder's Opposition to Plaintiff's Motion for Summary Judgment, and for good cause states as follows:

I. Defendant's "renewed" motion for summary judgment on Court VI - Ejectment should be denied.

Preliminarily, Defendant Justin Holder ("Holder") repeatedly stated in his Opposition that he is seeking to renew his request for Summary Judgment on Count VI – Ejectment, which he incorporated and attached as an exhibit. (Opp. at 1). Holder himself acknowledged that his motion for summary judgment was already denied by the Court. (*Id.* at 1, n.1).

Holder filed a motion for summary judgment as to Count VI, which the Court denied on May 19, 2021. He filed a renewed motion for summary judgment as to Count VI on May 7, 2022, which failed to comply with the Case Management Order. On May 17, 2022, the Court issued an Order denying Holder's motion, determining that "there is no good cause upon which the Motion for Summary Judgment could be granted." Holder's motion to amend the denial of summary judgment was denied by the Court. Given the Court's repeated denials of Defendant's Motion for Summary Judgment, and the failure to file this "renewed" motion by the dispositive

motion deadline set forth in the Scheduling Order, the Court should deny Holder's motion for summary judgment as to Count VI for a third time.

II. There are no genuine disputes of material fact.

Summary judgment should be entered in Plaintiff's favor as to all claims in the Second Amended Complaint because there is "no genuine dispute as to any material fact." Md. Rule 2-501(a). First, as to Plaintiff's claims for trespass and violation of § 5-409 of the Natural Resources Article of the Maryland Annotated Code, he has proven that Holder removed, cut down, or otherwise cleared and destroyed trees, shrubs, and other plants and vegetation. (Ex. 1 to MSJ, to Pl. Aff., ¶ 24). Holder does not deny in his Opposition that he did, and there is therefore no dispute that he removed, cut down, cleared, and/or destroyed trees, shrubs, and other plants and vegetation. Holder inaccurately states that paragraphs 25, 27, and 28 of Plaintiff's affidavit, which describe Holder's admitting to taking such action, are hearsay:

> 25. I met with Holder on December 31, 2019. At that meeting, Holder acknowledged that he and/or his agents had removed had removed plants, alders, trees, underbrush, and/or vegetation from the Estes Property and showed me where he had cleared.
>
> 27. On or about January 18, 2020, Holder sent a text message to me stating, "Please maintain your property or I will," indicating that that he intended to continue to enter onto my land and continue to clear or otherwise remove vegetation on the Estes Property."
>
> 28. On January 19, 2020, Holder admitted to clearing my land, sending me a text message stating, "I removed an old fence on the property that was a hazard. I looked across the creek and saw a nice creek bank. I thought it was common courtesy to clean up a mess on your side as well." (Ex. 7 to Motion for Summary Judgment). The fence had formed part of the shared boundary that separated the Estes Property and Holder Property.

(Ex. 1 to MSJ, Estes Aff., ¶¶ 25, 27-28); (Opp. at 6). But these are statements of a party opponent and are excluded by the hearsay rule. *See* Md. Rule 5-803 ("The following are not excluded by the hearsay rule, even though the declarant is available as a witness: (a) A statement

that is offered against a party and is: (1) The party's own statement, in either an individual or representative capacity.").

Maryland Rule 2-501(b) provides that a response to a motion for summary judgment:

> shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

"A response that simply denies or argues that the facts are in dispute without inclusion of an affidavit or other admissible evidence is insufficient. The court cannot treat bald allegations in a response as creating a dispute fact, any more than it can assume that contentions made in an opening statement or closing argument dispute evidence introduced at trial." *Clark v. O'Malley*, 169 Md. App. 408, 424 (2006) (quoting Niemeyer & Schuett, Maryland Rules Commentary 357 (3d ed. 2003)). *See also Lerner v. Ammerman*, 56 Md. App. 134, 144 (1983) ("A mere naked assertion that there is a there is a dispute between the parties as to the facts of the matter is insufficient to raise such issue and ineffectual to prevent a summary judgment."). Throughout Holder's Opposition, he makes bald allegations that there are disputes of fact or that statements in Plaintiff's affidavit are inaccurate, without being "supported by an affidavit or other written statement under oath," as is expressly required by Rule 2-501(b).

This case revolves around the fact that the trees, shrubs, bushes, and/or vegetation that Holder destroyed were on the Estes Property. Plaintiff has proven that he has clear record title to the lands subject to this action, which is supported by the plain language of the deeds in the chains of title for both the Estes Property and the Holder Property. "The interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law." *Webb*

v. Nowak, 433 Md. 666, 681 (2013). *See Gordy v. Ocean Park, Inc.*, 218 Md. 52, 60 (1958) ("That, as a general rule, the construction or interpretation of all written instruments is a question of law for the court is a principle of law that does not admit of doubt.").

Here, there are no genuine disputes of material fact because the interpretation of the deeds, surveys, and plats is a question of law for the Court, not a factual dispute for the trier of fact. The chains of title for both properties, including the plats prepared by surveyor Frederic Frederick, clearly show the boundary line between the properties being on the western side of Little Antietam Creek. Defendants have recorded at least three deeds that admit and acknowledge Plaintiff's record title, including the deed to Deena Holder, the deed to Uncle Eddies, the deed from Smith to Uncle Eddies, and Plat 10955. (Ex. 3, 5 to MSJ). The interpretation of these written documents—and all other written documents in the records—is not a factual issue but a legal issue for the Court to decide.

III. Plaintiff has clear record title of the property.

The law in Maryland is clear that in a quiet title action, a plaintiff must show "clear proof" of possession, which requires a preponderance of the evidence standard, not clear and convincing evidence. *See Porter v. Schaffer*, 126 Md. App. 237, 261 n. 15, 274 (1999).The burden then shifts to defendant to establish superior title. *Id.* at 274. When a defendant is not able to establish his own record title, he "has no basis to complain about the strength of the plaintiff's title." *Id.* at 274.

Here, Plaintiff has provided evidence that undoubtedly supports a prima facie claim for title. The chains of title for both the Estes Property and the Holder Property, and the plats of both properties prepared by Frederic Frederick, clearly show the boundary line between the properties

is on the western side of Little Antietam Creek. (Ex. 11 to MSJ, Survey 2019).[1] Plaintiff has shown "clear proof" of possession, as supported by these chains of title and the deposition testimony of Mr. Frederick and John Dowling.

As Plaintiff's claim to title has gone unchallenged, the burden is shifted to the Defendants "to establish a title which he has set up to defeat the complainant's claim of ownership." *Porter*, 126 Md. App. at 260. Holder has failed to satisfy his burden of showing that he has superior title to the land that is the subject of this action. Holder cannot show any evidence of any title that he has to the Holder Property. The Holder Property is owned by Deena Holder and/or Uncle Eddies Brokedown Palace, LLC, a New Mexico limited liability company that is not registered in the State of Maryland as a foreign corporation or limited liability company authorized to do business in Maryland and does not have any members. Holder has not shown any evidence that he is a member or otherwise has any ownership interest in Uncle Eddies Brokedown Palace, LLC. A defendant "who cannot establish his own record title has no basis to complain about the strength of the plaintiff's title." *Porter*, 126 Md. App. at 274. Because Holder does not have *any* title to the Holder Property, he cannot assert that he has superior title to the land at issue. For that reason alone, judgment as to Plaintiff's claim for quiet title as to Holder should be entered in Plaintiff's favor.

Holder's primary argument that Plaintiff does not have title to the property at issue is the non-recorded plat that Holder paid George Nagel to prepare. This plat is in conflict with Defendants' own previous recorded surveys and is entirely inconsistent with Plaintiff's and Defendants' deeds. (Ex. 17 to MSJ). Nagel failed to plot any of Defendants' numerous deeds, and failed to plot the very deed it purports to memorialize (confirmatory deed recorded at 6845

[1] Plaintiff inaccurately referred to this as exhibit as Exhibit 4 in his affidavit.

345). (Ex. 17 to MSJ). Nagel, who disregarded over 100 years of recorded deeds in Defendants' chain of title, drew lines not existing in Defendants' own deed and directly controverting the plain language in the deed itself. Further, Holder argues that as a matter of law deed NN520 called to the natural monument of the Little Antietam Creek as a boundary, despite Defendants' own recorded deeds stating to the contrary and despite over 100 years of deeds in their chain of title stating otherwise.

Holder argues that there is a 200-year-old deed that indicates at some point nine courses and distances rans down the center of Little Antietam Creek. In the recorded title and surveys over the past 100 years, there are no deeds or recorded surveys indicating that the Defendants' properties, where they abut the Plaintiff's property, run in the middle of the creek. Rather, all of the deeds, including the Uncle Eddies' confirmatory deed, state that Defendants' properties begin on the West Bank of Little Antietam Creek.

Holder has mischaracterized the sworn testimony of Frederic Frederick, the surveyor of both the Estes and Defendants' properties. Frederick testified that he stands behind his recorded plats with regard to the property locations of the Estes Property and Holder Property. Frederick repeatedly testified that Plaintiff's land begins on the West side of Little Antietam Creek on the land and the Holder Property starts on the west bank of Little Antietam Creek on the land, and that the property lines do not run down the middle of the creek:

> Q. All right. And I'm going to just go ahead and call this L10 to the bridge line, the shared boundary line, rather than repeat that whole statement over and over again. With that said. Is it your opinion to a reasonable degree of professional certainty that the shared boundary line shown on this plat, number 10955, accurately depicts the actual boundary lines between the Estes and the Holder/Uncle Eddies property line?
>
> A. That is my professional opinion.

(Ex. 1, Frederick Dep. Tr., 4/27/21, at 111-12). He testified that the boundary "has never changed" and was based on the deed for both properties and adjoining deeds, which "[c]learly, they called for going to the west side of the creek." (*Id.* at 53). He further testified that it was his opinion that there was no deed overlap and that when he did the work he did not see any deed overlap. (*Id.* at 130).

As Plaintiff has shown that the record title reflects that he is the legal owner of the land at issue, and Holder has not shown that he has superior title, summary judgment as to the claims against Holder should be found in Plaintiff's favor.

IV. Plaintiff has title to the land by adverse possession.

It is unassailable under Maryland law that a plaintiff may establish adverse possession even if the plaintiff did not own the property for the statutory period. *See Kirby v. Hook*, 347 Md. 395 (1997). "[P]ossessions under color of title of the successive predecessors in title may be tacked to complete the twenty year statutory period." *Id.* Here, Plaintiff's predecessor in title took title to Plaintiff's property in 1990, at least 28 years before any entry by Defendants and clearly before any potential re-entry by Defendants.

Defendants' argument that Plaintiff's possession via personal use and use by his predecessors was not continuous for the 20 year period are equally without merit. Holder argues that a house fire may have left the home vacant for a period of time during the 28 year period of open, notorious, adverse, exclusive, and continual possession. This argument is misplaced. Continuous does not mean constantly and without interruption, but with such frequency and constancy as to affect the true owner with notice. *See Zimmerman v. Summers*, 24 Md. App. 100, 108 (1975). "The requirement that adverse use be continuous does not mean that the use must be exercised constantly and without any intermission. The requirement may be satisfied by use 'with

such frequency and constancy as to affect the landowner with notice that it is being exercised,'" even if the absence is for a few years. *Id.* The Court of Appeals in *Clayton v. Jensen*, 240 Md. 337, 344-45 (1965) stated:

> Daily use of the right of way is not required, but only that use normally resulting from the nature of the use itself. It is only required that a cessation of use not indicate a voluntary abandonment of the use by the person claiming it. Indeed we have held that the absence of the person seeking to establish the easement from the dominant tenement for 'a few years' during which time the right of way was not used by that person, who, however, resumed the use upon her return, did not prevent the use from being continuous or indicate an abandonment of the use.

(Internal quotations omitted).

In *Stuart v. Johnson*, 181 Md. 145 (1942), the owner of the dominant tenement lived on it when she was growing up and used the roadway on the servient tenement without interference from its owner during that period. Her house was destroyed by a fire and she moved away for several years. *Id.* at 148. She returned a few years later, purchased the property, and resumed her use of the roadway. *Id*. The Court held that this use was sufficiently continuous to sustain her burden of proving she had acquired title by prescription to the right of way. *Id.* at 149.

Holder's argument that there is no admissible evidence of adverse possession prior to 2010, the year when Plaintiff took possession of the property, should be rejected. (Opp. at 1). It is undisputed that Plaintiff and his predecessors in title used the land in excess of the 20 year requirement in such a fashion to affect any other potential owners with notice. It is undisputed that the use by Plaintiff and his predecessors was so continuous, exclusive, open, and notorious that all of the Defendants and their predecessor in title filed numerous deeds and plats among the land records of Washington County revealing the same. Plat 10955, recorded in the land records of Washington County, clearly shows in one such instance where Justin and Deena Holder had clear notice of Plaintiff's continuous and exclusive possession of the land in question and

certainly sufficient to place all Defendants on notice of the continuous use. In a letter to Holder on February 13, 2020, surveyor Frederic Frederick stated that "in 1993 we did find old fence line and possession line of that area when surveying for Richard Jolles who was a predecessor in title to the Estes property." (Ex. A1 to Holder's Opp.). This is reflected in the original 1993 survey for Richard Jolles as recorded in Plat folio 4040. (*Id.*).

Holder's argument that Plaintiff's claim of title through adverse possession must fail because it relies upon hearsay evidence from Maxwell Hope, a predecessor in title to the Estes property should also be rejected. Rule 5-803(20) provides that "[t]he following are not excluded by the hearsay rule, even though the declarant is available as a witness…: (20) Reputation in a community, prior to the controversy before the court, as to boundaries of, interests in, or customs affecting lands in the community." It is "clear that the declarations of a deceased former owner of land are admissible as an exception to the hearsay rule to prove the boundaries thereof provided there was no controversy as to the boundaries at the time the declarations were made." *See Wilt v. Wilt*, 242 Md. 129, 134-35 (1966) (holding that, where there was no controversy as to whether the fence was the boundary line at the time the predecessors in title, who died before the start of the present controversy, told plaintiff was the boundary line, the testimony of plaintiffs with the predecessors in interest about the boundary line was admissible). *See also Cadwalader v. Price*, 111 Md. 310 (1909) ("There ought no longer to be any question in Maryland about the right to prove private boundaries by the declarations of deceased persons, subject, of course, to certain well recognized limitations.").

The residual hearsay rule also allows for Hope's statements to be utilized as a hearsay exception.[2] Hope's statements have equivalent circumstantial guarantees of trustworthiness as Hope recorded several land instruments indicating essentially the same statements. The statements are offered as evidence of a material fact; the statements are more probative on the point for which they are offered than any other evidence which Plaintiff could procure through reasonable efforts; and the general purposes of the rules of evidence and interests of justice are best served by admission of the statements into evidence.

Plaintiff attested that Mr. Hope told him that the Estes Property included property on both sides of Little Antietam Creek and specifically point out that the Dispute Property was part of the Estes Property. (Ex. 2, Estes Aff., 7/28/22, ¶ 2). Hope also told him that there was an old fence on the Disputed Property that formed part of the shared boundary and which separated the Estes Property and the Holder Property. (Ex. 1 to MSJ, Estes Aff., ¶ 20). Hope communicated this to Mr. Estes on or about September 11, 2010, which was years before the Holders moved on to the Holder Property and years before there was any dispute or controversy about the boundary line. (Ex. 2, Estes Aff., 7/28/22, ¶ 2).

Because Plaintiff has established that he obtained valid title through adverse possession, summary judgment should be entered in his favor.

V. Conclusion.

[2] "Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence." Md. Rule 5-803(24).

Plaintiff Benjamin Estes respectfully requests that for the reasons set forth herein, and in his Motion for Summary Judgment, the Court grant judgment in Plaintiff's favor as to all claims in the Second Amended Complaint.

Respectfully submitted,

By: */s/*_____
Timothy F. Maloney, CPF #86060102045
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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2022, a copy of the foregoing was served on all counsel of record and parties via MDEC.

*/s/*_____
Alyse L. Prawde

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. C-21-cv-20-000430
	:	
JUSTIN HOLDER, *et al.*	:	
	:	
Defendants.	:	

PLAINTIFF'S REPLY TO DEFENDANT UNCLE EDDIES BROKEDOWN PALACE, LLC'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Plaintiff Benjamin Estes, by and through undersigned counsel, files this Reply to Defendant Uncle Eddies Brokedown Palace, LLC's Opposition to Plaintiff's Motion for Summary Judgment, and for good cause states as follows[1]:

I. There are no genuine disputes of material fact in dispute.

While Uncle Eddies' vaguely asserts that there are genuine issues of material fact, it does not include an affidavit or any exhibits with its opposition in support of such a contention. Uncle Eddies merely cites to and incorporates Defendant Justin Holder's opposition, which has the same problems of failing to comply with Maryland Rule 2-501(b). Maryland Rule 2-501(b) provides that a response to a motion for summary judgment:

> shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

[1] Plaintiff incorporates herein his reply to Defendant Justin Holder's Opposition to Plaintiff's Motion for Summary Judgment.

"A response that simply denies or argues that the facts are in dispute without inclusion of an affidavit or other admissible evidence is insufficient. The court cannot treat bald allegations in a response as creating a dispute fact, any more than it can assume that contentions made in an opening statement or closing argument dispute evidence introduced at trial." *Clark v. O'Malley*, 169 Md. App. 408, 424 (2006) (quoting Niemeyer & Schuett, Maryland Rules Commentary 357 (3d ed. 2003)). *See also Lerner v. Ammerman*, 56 Md. App. 134, 144 (1983) ("A mere naked assertion that there is a there is a dispute between the parties as to the facts of the matter is insufficient to raise such issue and ineffectual to prevent a summary judgment."). Throughout Uncle Eddies' Opposition, it makes bald allegations that there are disputes of fact or that statements in Plaintiff's affidavit are inaccurate, without being "supported by an affidavit or other written statement under oath," as is expressly required by Rule 2-501(b).

Uncle Eddies does not actually specify what material facts it contends are in dispute, other than stating that the surveyors differ on the lines to be drawn. However, "[t]he interpretation of mortgages, plats, deeds, easements and covenants has been held to be a question of law." *Webb v. Nowak*, 433 Md. 666, 681 (2013). *See Gordy v. Ocean Park, Inc.*, 218 Md. 52, 60 (1958) ("That, as a general rule, the construction or interpretation of all written instruments is a question of law for the court is a principle of law that does not admit of doubt.").

Here, there are no genuine disputes of material fact because the interpretation of the deeds, surveys, and plats is a question of law for the Court, not a factual dispute for the trier of fact. The chains of title for both properties, including the plats prepared by surveyor Frederic Frederick, clearly show the boundary line between the properties being on the western side of Little Antietam Creek. Defendants have recorded at least three deeds that admit and acknowledge Plaintiff's record title, including the deed to Deena Holder, the deed to Uncle

Eddies, the deed from Smith to Uncle Eddies, and Plat 10955. (Ex. 3, 5 to MSJ). The interpretation of these written documents—and all other written documents in the records—is not a factual issue but a legal issue for the Court to decide.

II. Plaintiff has clear record title of the property.

The law in Maryland is clear that in a quiet title action, a plaintiff must show "clear proof" of possession, which requires a preponderance of the evidence standard, not clear and convincing evidence. *See Porter v. Schaffer*, 126 Md. App. 237, 261 n. 15, 274 (1999). The burden then shifts to defendant to establish superior title. *Id.* at 274. When a defendant is not able to establish his own record title, he "has no basis to complain about the strength of the plaintiff's title." *Id.* at 274.

Here, Plaintiff has provided evidence that undoubtedly supports a prima facie claim for title. The chains of title for both the Estes Property and the Holder Property, and the plats of both properties prepared by Frederic Frederick, clearly show the boundary line between the properties is on the western side of Little Antietam Creek. (Ex. 11 to MSJ, Survey 2019).[2] Plaintiff has shown "clear proof" of possession, as supported by these chains of title and the deposition testimony of Mr. Frederick and John Dowling.

As Plaintiff's claim to title have gone unchallenged, the burden is shifted to the Defendants "to establish a title which he has set up to defeat the complainant's claim of ownership." *Porter*, 126 Md. App. at 260. Uncle Eddies has failed to satisfy its burden of showing that it has superior title to the land that is the subject of this action. Its only argument is that the surveyors differ on the lines to be drawn. But the non-recorded plat that Justin Holder paid George Nagel to prepare is in conflict with Defendants' own previous recorded surveys and

[2] Plaintiff inaccurately referred to this as exhibit as Exhibit 4 in his affidavit.

is entirely inconsistent with Plaintiff's and Defendants' deeds. (Ex. 17 to MSJ). Nagel failed to plot any of Defendants' numerous deeds, and failed to plot the very deed it purports to memorialize (deed recorded at 6845 345). (Ex. 17 to MSJ). Nagel, who disregarded over 100 years of recorded deeds in Defendants' chain of title, drew lines not existing in Defendants' own deed and directly controverting the plain language in the deed itself.

Uncle Eddies is a New Mexico limited liability company that is not registered to do business in the State of Maryland. Since March 2018, its sole member has been Koolbus, LLC, a New Mexico limited liability company that is not registered in the State of Maryland and that does not have any members. Uncle Eddies has not registered as a foreign business with the Maryland Department of Assessments and Taxation. Section 4A-1002 of the Corporations and Associations Article of the Maryland Annotated Code provides that, "Before doing any interstate, intrastate, or foreign business in this State, a foreign limited liability company shall register with the Department." Md. Code Ann., Corp. & Assoc. § 4A-1002(a). Here, Uncle Eddies has failed to register as a foreign limited liability company with the State at the time it purchased the real property at issue or bought or sold the real property to Deena Holder.

Additionally, Maryland Rule 12-809(a) provides that an answer to a complaint for quiet title "shall be verified and shall set forth: (1) any claim the defendant has to the property that is the subject of the action; (2) any facts tending to controvert material allegations of the complaint; and (3) a statement of any new facts constituting a defense to the plaintiff's claim." Uncle Eddies' Answer to the Second Amendment included a verification but was signed by Justin Holder as a "Member" of Uncle Eddies. At a hearing in the Circuit Court for Washington County on June 23, 2022, counsel for Uncle Eddies proffered that the only persons or entities that have ever been members of Uncle Eddies are Deena Holder and Koolbus, LLC. It was not proper for

Justin Holder, who is not a member of Uncle Eddies, to sign the verification as a "member" of Uncle Eddies.

As Plaintiff has shown that the record title reflects that he is the legal owner of the land at issue, and Uncle Eddies has not shown that it has superior title, summary judgment as to the claims against Uncle Eddies should be found in Plaintiff's favor.

III. Plaintiff has title to the land by adverse possession.

Uncle Eddies asserts that Plaintiff's claim for adverse possession has not ripened because he bought the property in 2013. (Opp. at 2). However, it is unassailable under Maryland law that a plaintiff may establish adverse possession even if the plaintiff did not own the property for the statutory period. *See Kirby v. Hook*, 347 Md. 395 (1997). "[P]ossessions under color of title of the successive predecessors in title may be tacked to complete the twenty year statutory period." *Id. See also Senez v. Collins,* 182 Md. App. 300, 333 (2008) ("[T]wo possessions will be tacked if it appears that the adverse possessor actually turned over possession of that part as well of that portion expressly included in his deed."). Here, Plaintiff's predecessor in title took title to Plaintiff's property in 1990, at least 28 years before any entry by Defendants and clearly before any potential re-entry by Defendants.

Defendants' argument that Plaintiff's possession via personal use and use by his predecessors was not continuous for the 20 year period are equally without merit. Defendants argues that a house fire may have left the home vacant for a period of time during the 28 year period of open, notorious, adverse, exclusive, and continual possession. This argument is misplaced. Continuous does not mean constantly and without interruption, but with such frequency and constancy as to affect the true owner with notice. *See Zimmerman v. Summers*, 24 Md. App. 100, 108 (1975). "The requirement that adverse use be continuous does not mean that

the use must be exercised constantly and without any intermission. The requirement may be satisfied by use 'with such frequency and constancy as to affect the landowner with notice that it is being exercised," even if the absence is for a few years. *Id.* The Court of Appeals in *Clayton v. Jensen*, 240 Md. 337, 344-45 (1965) stated:

> Daily use of the right of way is not required, but only that use normally resulting from the nature of the use itself. It is only required that a cessation of use not indicate a voluntary abandonment of the use by the person claiming it. Indeed we have held that the absence of the person seeking to establish the easement from the dominant tenement for 'a few years' during which time the right of way was not used by that person, who, however, resumed the use upon her return, did not prevent the use from being continuous or indicate an abandonment of the use.

(Internal quotations omitted).

In *Stuart v. Johnson*, 181 Md. 145 (1942), the owner of the dominant tenement lived on it when she was growing up and used the roadway on the servient tenement without interference from its owner during that period. Her house was destroyed by a fire and she moved away for several years. *Id.* at 148. She returned a few years later, purchased the property, and resumed her use of the roadway. *Id*. The Court held that this use was sufficiently continuous to sustain her burden of proving she had acquired title by prescription to the right of way. *Id.* at 149.

Uncle Eddies' argument that there is no admissible evidence of adverse possession prior to 2010, the year when Plaintiff took possession of the property, should be rejected. (Opp. at 1). It is undisputed that Plaintiff and his predecessors in title used the land in excess of the 20 year requirement in such a fashion to affect any other potential owners with notice. It is undisputed that the use by Plaintiff and his predecessors was so continuous, exclusive, open, and notorious that all of the Defendants and their predecessor in title filed numerous deeds and plats among the land records of Washington County revealing the same. Plat 10955, recorded in the land records of Washington County, clearly shows in one such instance where Justin and Deena Holder had

clear notice of Plaintiff's continuous and exclusive possession of the land in question and certainly sufficient to place all Defendants on notice of the continuous use. In a letter to Holder on February 13, 2020, surveyor Frederic Frederick stated that "in 1993 we did find old fence line and possession line of that area when surveying for Richard Jolles who was a predecessor in title to the Estes property." (Ex. A1 to Holder's Opp.). This is reflected in the original 1993 survey for Richard Jolles as recorded in Plat folio 4040. (*Id.*).

Because Plaintiff has established that he obtained valid title through adverse possession, summary judgment should be entered in his favor.

IV. Conclusion.

Plaintiff Benjamin Estes respectfully requests that for the reasons set forth herein, and in his Motion for Summary Judgment, the Court grant judgment in Plaintiff's favor as to all claims in the Second Amended Complaint.

Respectfully submitted,

By: */s/*_____

Timothy F. Maloney, CPF #86060102045
Alyse L. Prawde, CPF #1412180033
Joseph Greenwald & Laake, PA
6404 Ivy Lane, Suite 400
Greenbelt, MD 20770
(301) 220-2200 (phone)
(301) 220-1214 (fax)
tmaloney@jgllaw.com
aprawde@jgllaw.com
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 28, 2022, a copy of the foregoing was served on all counsel of record and parties via MDEC.

/s/
Alyse L. Prawde

IN THE CIRCUIT COURT

FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES,	:	CERTIFIED COPY
Plaintiff,	:	
v.	:Case No.:	
JUSTIN HOLDER,	:C-21-CV-20-000430	
	:	
Defendants.	:	

DEPOSITION OF FREDERIC FREDERICK,

ZOOM VIDEOCONFERENCE

Tuesday, April 27, 2021

9:00 a.m.

Atkinson-Baker, a Veritext Company

(800) 288-3376

www.depo.com

Reported by: Sydney Crawford, RPR

File No.: AF03233

scientific number to say every fifth one is going to be wrong. There -- there is nothing, but they do happen.

Q And you corrected this deed overlap?

A Remember, in 1990, I did the survey for Remsberg/Jolis.

Q Okay.

A That boundary, in my mind, has never changed. I based it on that deed, their deed, and adjoining deeds. Clearly, they called for going to the west side of the creek.

Q Okay. So you said you corrected the deed overlap, could -- if you could just -- I apologize. I'm an automotive mechanic, and I don't know a lot about surveying, and I'm not trying to get your opinion. I'm trying to talk to you about this e-mail, and how we corrected the deed overlap in this particular case.

A So in this case, in 1990, I did the survey for the Remsberg/Jolises, I found monumentation, I found possession. I knew their deed called for the west side and I held the

last point shared between the Estes and Uncle Eddies property?

A Yes.

Q Are there any other boundary lines of the Uncle Eddies/Holder properties that abut the Estes property?

A None.

Q And the -- the 269.59 line, that is the length of the line after adjustment for the DNR survey of the railroad?

A Correct.

Q All right. And I'm going to just go ahead and call this L10 to the bridge line, the shared boundary line, rather than repeat that whole statement over and over again. With that said.

Is it your opinion to a reasonable degree of professional certainty that the shared boundary line shown on this plat, number 10955, accurately depicts the actual boundary lines between the Estes and the Holder/Uncle Eddies property line?

A That is my professional opinion.

Q All right. I'm pulling up another document, please let me know when you see it. It should be labeled Greivell letter.

A I can see it now.

Q I think I spelled it wrong, but you get the idea. Have you seen this document before?

A I just saw it for the very first -- this morning.

Q So is it fair to say you haven't formed any opinions with whether you agree or disagree with Mr. Grievell's opinions?

A I disagree, after reading it. You know, and, of course, I was called by the board and I had to defend myself.

(Simultaneous cross-talking.)

Q Okay. Do you -- would you -- go ahead --

A That's a year old. About. That's roughly a year old. And I've already had to provide the board with, you know, all of my findings, etc.

On -- on plats, are you required to draw all deed overlaps based on this document?

A If deed overlaps exist.

Q Did deed overlaps exist when you did plat 10995?

A I don't believe so, no.

Q What would you call -- I'm sorry. Go ahead.

A Remember when I was with you in the field, I showed you where that line was, and there didn't seem to be any issue at that time. You know, I don't think there's a deed overlap. You think there's a deed overlap. And maybe -- maybe, I don't know, maybe you got the other professional surveyor to think there's a deed overlap, but at the time I did this work, I did not see a deed overlap. So I don't -- to this day, I don't believe there's really a deed overlap.

Q What if I took a mini track and I drove it down the old railroad, that 11-foot section, do you think the Department of Natural Resources would think there's a deed overlap?

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES, Plaintiff, v. JUSTIN HOLDER, *et al.* Defendants.	:	Case No. C-21-cv-20-000430

AFFIDAVIT OF BENJAMIN ESTES

COMES NOW, the Affiant, and hereby swears and affirms under penalty of perjury and upon personal knowledge that the following is true and correct:

1. My name is Benjamin Estes. I am over the age of eighteen (18) and am competent to testify.

2. On or about September 11, 2010, Maxwell Hope told me that the Estes Property included property on both sides of Little Antietam Creek and specifically pointed out that land that as is now at issue in this litigation was part of the Estes Property.

I declare or affirm under the penalties of perjury that the content of the foregoing Affidavit is true and correct and is based upon personal knowledge.

Benjamin Estes

7-28-22
Date

E-FILED; Washington Circuit Court
Docket: 3/24/2021 4:30 PM; Submission: 3/24/2021 4:30 PM

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES **Plaintiff** **v.** **JUSTIN HOLDER, *et al*.** **Defendants**	**Case No. C-21-CV-20-000430**

MOTION FOR PROTECTIVE ORDER

The Plaintiff, by and through his attorneys, Mark W. Schweitzer, Aaron D. Neal, and McNamee, Hosea, Jernigan, Kim, Greenan & Lynch, P.A., moves for a protective order with respect to a subpoena issued by Defendant Justin Holder, and says:

1. On Saturday, March 19, 2021, Defendant Justin Holder issued a notice of deposition and subpoena seeking the production of documents from and to schedule the deposition of a third party, Frederic Frederick, for March 31, 2021 at 9:00 am. *See* Exhibit 1.
2. Mr. Holder then sent an email to counsel indicating that he intended to depose Mr. Frederick prior to the documents being produced. *See* Exhibit 2 at p. 4-5.
3. Shortly thereafter, undersigned counsel conferred with Mr. Holder about delaying the deposition until documents are produced, to avoid having to depose Mr. Frederick twice. Id. at p. 1-4. Counsel also pointed Mr. Holder to Md. Rule 2-411 and its restrictions on deposing the same person twice in a single litigation. Id. at p. 1.
4. Counsel also inquired as to whether there was a pressing need to depose Mr. Frederick the following week, or whether the deposition could be postponed. Id.

5. Mr. Holder responded that he intended to proceed with the deposition as scheduled[1] and that counsel should file a motion to shorten time with any motion for protective order. Id.
6. Mr. Frederick is likely the key witness in this case, which involves the location of the shared boundary line between Plaintiff's property (the "Estes Property", as defined in the Amended Complaint) and Defendant Deena Holder's property (the "Holder Property", as defined in the Amended Complaint). Defendant Justin Holder is alleged to have trespassed on the Estes Property and the Defendants have raised questions (albeit specious questions) about the location of the shared boundary line. *See generally* Amended Complaint; *see also* Amended Answer at 10th Defense.
7. Mr. Frederick has surveyed both properties and has previously advised Mr. Holder that the Plaintiff's position regarding the location of the boundary lines is, in fact, correct. *See* Exhibit 3.
8. In order to properly depose Mr. Frederick, the parties need to obtain copies of his file, including the backup documents (title records, notes, plats, etc.) that Mr. Frederick used to identify the boundary lines, such that the parties can inquire of Mr. Frederick regarding the basis for his opinions at deposition.
9. Holding Mr. Frederick's deposition in a vacuum, without production of his file, would be counterproductive and would most likely require a second deposition once the file is produced, placing undue burden on the Plaintiff, who would have to conduct a second deposition and get leave for same pursuant to Md. Rule 2-411, and on Mr. Frederick, who would have to needlessly sit through two depositions.
10. For those reasons alone, Plaintiff is entitled to a protective order under Md. Rule 2-403.

[1] Mr. Holder has since indicated that he may be willing to delay the deposition upon Mr. Frederick's request. As of the time of this filing, no alternative dates have been proposed and the deposition is coming up in one (1) week, thus this motion is being filed out of an abundance of caution. *See* Exhibit 4.

11. Furthermore, Plaintiff needs responses to his discovery requests seeking the basis for Defendant's claims of a boundary line dispute prior to deposing Mr. Frederick, such that Plaintiff can inquire of Mr. Frederick regarding the Defendant's claims.
12. Defendants' discovery responses are due on or about April 21, 2021. *See* Certificate Regarding Discovery (Mar. 19, 2021).
13. Finally, it is not clear that Mr. Frederick has even been served with the subpoena yet and even if he was served on the next business day after issuance, his objection under Md. Rule 2-510(f) would be due on the very day of the deposition.
14. Mr. Holder has no reason to rush Mr. Frederick's deposition other than to harass and cause undue burden to the Plaintiff and Mr. Frederick. Trial is more than 3 months away. There is no scheduling order providing a deadline for depositions. There is no reason for Mr. Holder to hold Mr. Frederick's deposition on short notice and there is plenty of time prior to trial to conduct Mr. Frederick's deposition in an orderly fashion, *after* he has produced documents.
15. Pursuant to Md. Rule 2-403, Plaintiff is entitled to a protective order requiring the deposition of Fred Frederick to be conducted *after* Defendants have provided discovery responses and *after* Mr. Frederick produces the subpoenaed documents.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court grant his motion and enter the attached protective order.

Respectfully submitted,

McNamee, Hosea, Jernigan, Kim,
Greenan & Lynch, P.A.

/s/ Mark W. Schweitzer
Mark W. Schweitzer, Esq.
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/s/ Aaron D. Neal
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Tel. 301-441-2420
Fax 301-982-9450

Attorneys for the Plaintiff

Certificate of Service

I hereby certify that on this 24th day of March, 2021, the foregoing paper filed via MDEC and thus served electronically upon all registered parties, including:

Brendan Callahan, Esq.
Justin Holder

And via first class mail on:

Deena Holder
308 W. Chapline Street
Sharpsburg, Maryland 21782

/s/ Aaron D. Neal
Aaron D. Neal, Esq.

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES	:	
	:	
Plaintiff	:	
v.	:	Case No.: C-21-CV-21-000130
	:	Case No.: C-21-CV-20-000430
JUSTIN HOLDER, ET AL.	:	
	:	
Defendants	:	
	:	

MOTION FOR PROTECTIVE ORDER

Non-party, Frederick Seibert & Associates, Inc. ("FSA") and Frederic Frederick, by counsel, CARR MALONEY P.C. hereby moves for a Protective Order, pursuant to Md. Rules of Civil Procedure 2-403 and 2-510.1, in regard to the served upon Subpoena Duces Tecum and Deposition Subpoena by Defendant Justin Holder, which seeks deposition testimony and the production of documents from FSA regarding its records, communications and other documents related to the preparation of survey records of properties located within the Tax District 19 or Keedysville, Maryland. The subpoena duces tecum further requests the production of documents, including documents that are a matter of public record from the Washington County Land Records Department and/or Maryland State Archives. These overly broad requests are not only not related to admissible evidence, but will also involve an unduly burdensome, time consuming and expensive search of hundreds of pages of unrelated documents at the expense of a non-party deponent. In further support of this Motion, FSA respectfully states as follows:

1. Mr. Frederick is the managing owner of FSA who performed a survey of Mr. Estes property in 2015. Prior to that, he performed a survey for Ellis Remsburg in the late 80's and Richard Jolles in the early 90's of this same Estes property. He also performed a survey of Mr. Holder's (Uncle Eddie's Broken Down Palace) boundary line in 2018. Mr. Frederick only used

public records in performing the surveys on the Holder and Estes properties and has already provided Mr. Holder with copies of everything he used in arriving at his final boundary decisions.

2. On March 4, 2021, Mr. Holder served a subpoena duces tecum and deposition subpoena on Frederic Frederick in connection with an Amended Complaint filed by Benjamin Estes against Justin Holder and his wife, Deena Holder, for trespass to land, statutory claim pursuant to Maryland Natural Resources Article § 5-409 (injury to trees belonging to Plaintiff), private nuisance, aiding and abetting trespass to land, quiet title, and ejectment. Thereafter, 349 pages of documents were produced to Mr. Holder in response to his first subpoena duces tecum. Almost simultaneously, Mr. Holder conducted a deposition of Mr. Frederick in a separate, but related action pending in Maryland State Court that was approximately 6.5 hours in length.

3. In March 2021, Mr. Holder served Mr. Frederick with a second deposition subpoena in a separate action, but related to the same set of facts and the same survey performed by Mr. Frederick on Mr. Estes and the Holder properties. Mr. Frederick agreed to sit for a second deposition pursuant to Mr. Holder's second subpoena and was again deposed on April 27, 2021.

4. In total, Mr. Frederick has already produced 1,097 pages of documents in response to two subpoenas duces tecum and has already sat for two separate depositions pursuant to deposition subpoenas, both of which were issued by Mr. Holder, collectively lasting for approximately 10 hours.

Deposition Subpoena for Mr. Frederick's Third Deposition.

5. On June 11, 2021, Mr. Frederick submitted an errata sheet outlining essentially one change to his deposition testimony. The change pertained to the ordering of the survey on Mr. Holder's property, specifically, who ordered the survey on Mr. Holder's property, Mr. Holder or Olde Town Title. (Exhibit A, Errata Sheet).

> "Q: Okay. All right. And do you – when you initially did the survey in April of 2018, Old[e] Town Title called you and ordered the survey?
> A: Correct." (Exhibit B, Frederick Deposition dated April 27, 2021, page 48, lines 19-22.

The change outlined in Mr. Frederick's errata sheet stated:

> "I initially thought Olde Towne ordered this survey only because I recalled supplying them with this survey and description when the work was complete. The survey was actually ordered by Mr. Holder." (Exhibit A, Errata Sheet).

6. On August 2, 2021, Mr. Holder notified undersigned counsel that he intended to depose Mr. Frederick for a third time in another related action against him pending in Maryland Court, however, this action was consolidated with the instant action, thereby prohibiting Mr. Frederick from being deposed twice in the same action. Md. Code, Courts & Jud. Pro., § 2-411.

7. Mr. Holder, seemingly upset at this Court's consolidation of cases, served FSA/Mr. Frederick with a Second Subpoena Duces Tecum and a Notice of Deposition for a further deposition. (Exhibit C, Subpoenas and Schedule of Documents). Mr. Holder advised undersigned counsel that he had moved the deposition of Mr. Frederick from September 3, 2021 to October 6, 2021 to accommodate all counsel, one of which was notified that day of Mr. Holder's subpoenas.

8. While Mr. Holder outwardly confirmed that this further deposition of Mr. Frederick would only be limited to the changes outlined in Mr. Frederick's errata sheet, Mr. Holder made a number of unsubstantiated arguments that he is essentially entitled to completely re-depose Mr. Frederick solely because Mr. Frederick remembered that Mr. Holder ordered the survey and not Old Town Title. In an email dated August 27, 2021, Mr. Holder identifies a different area of inquiry that he is now seeking to depose Mr. Frederick. Mr. Holder wrote in this email:

> "Mr. Frederick corrected his deposition and Ms. James is requesting to limit the scope of deposition to that change. So basically we are deposing Mr. Frederick to determine how he competently performed all engineering work with "no title work " or if perhaps he had some title work, or if I just paid 2800 bucks for reproduction of a "tax map".

> **********
> Good faith proffer
>
> In April 27th, 2021 Deposition Mr. Frederick refused to answer the question of more or less did he neglect to follow comar minimum survey standards in not illustrating deed overlap in the specific "corner" in the southwest of plat 9186 that is a matter of DNR- Plaintiff dispute."
> (Exhibit D, Email dated August 27, 2021)

9. Mr. Frederick has testified at length as to how FSA performed the survey of the boundaries of the Estes and Holder Properties and his testimony has remained unchanged. As to who ordered the boundary survey of the Holder property, FSA further contends that this one change in Mr. Frederick's deposition testimony does not constitute a "substantial change" subjecting Mr. Frederick to being re-deposed. Moreover, the documents produced by FSA pursuant to Mr. Holder's Subpoena Duces Tecum revealed that Mr. Holder actually ordered the survey and not Olde Town Title and undersigned counsel directed Mr. Holder to these documents at the time they were produced. Whether Mr. Holder truly forgot that he ordered this survey or now chooses to forget that he ordered this survey in an attempt to deceive Mr. Frederick should be of no consequence.

10. Should this Court find that the change made in Mr. Frederick's deposition constitutes a "substantial change," we respectfully request that Mr. Frederick's further deposition be limited only to the change outlined in his errata sheet – *i.e.* who ordered the survey of Mr. Holder's property. Md. Code, Courts & Jud. Pro., § 2-415(j). We further request that this deposition be limited to one half hour in length and that all questions be submitted to this Court for approval prior to the noticed deposition.

Second Subpoena Duces Tecum to FSA.

11. On August 25, 2021, undersigned counsel produced 1,097 pages of documents to Mr. Holder. Mr. Holder, apparently unsatisfied, advised that he would keep the custodian of

records deposition open (set for September 1, 2021) until Mr. Frederick produced more documents.

12. Mr. Holder seems to take issue with Mr. Frederick's response to Request No. 4 of Schedule A. Request No. 4 seeks "documents and Washington County survey records relating to any and all roads in Tax District 19 or Keedysville, MD." (Exhibit C, Subpoenas and Schedule of Documents). These documents were previously requested in Mr. Holder's first Subpoena Duces Tecum to FSA. On March 26, 2021, Mr. Frederick's prior counsel, D. Bruce Poole, advised Mr. Holder that Mr. Frederick is "uncertain as to whether the boundary surveys for Keedysville form the last 60s are in fact in his office, and where they would be." Attorney Poole further advised Mr. Holder that "it will be quite a bit of time required in order to fund these documents. They would be in records that generally are not well organized." (Exhibit E, Email dated 3/26/2021).

13. In response to Mr. Holder's second Subpoena, a corporate boundary map of Keedsyville, MD performed by Mr. Seibert in 1963 was produced. This map was referenced in a 2003 Corporate Boundary Map of the Town of Keedysville performed by Fox & Associates. Mr. Frederick found the 1963 Seibert Map after reviewing Mr. Fox's 2003 plan which referenced the 1963 Seibert Map. This reference prompted Mr. Frederick to perform a search of the Seibert files for this map and also provided Mr. Frederick with the approximate location of where to find this map within the Seibert files. Mr. Frederick is not aware of any other references or documents within his possession that related to any of the properties outlined in Mr. Holder's subpoena.

14. Mr. Holder, again unsatisfied with this production, kept the September 1, 2021 deposition date open presumably until Mr. Frederick produces to Mr. Holder each and every FSA file in Mr. Frederick's office or, at Mr. Holder's insistence, sign an affidavit "stating [Mr. Frederick] performed the survey work for plat 4040, 9186 and 10955 with no title work. That upon review of the title report he has Changed his opinion of title. That he declines to provide testimony

to any party in this case or other cases regarding aforesaid plats. He will not be appearing at trial to defend his work because he no longer believes it to be valid." (Exhibit F, Emails dated August 3, 2021; August 25, 2021).

15. Harold Seibert is a former owner of FSA before it was called FSA. Mr. Frederick did not join FSA until many years later in 1986. Mr. Seibert passed away in 1988 and was still working part time as a partner with FSA while he was in his 80 plus years of age. FSA retains substantial records of work performed by Mr. Seibert on properties located throughout Washington County. FSA has approximately 16 file drawers (each the size of a banker's box) and 20 flat files (each containing large drawings) of paper documents that have not been electronically scanned nor have these documents been organized in accordance with the system implemented and now currently used by FSA making it difficult to review all of these documents. Moreover, these documents pertain to records, surveys, maps and other documents related to properties surveyed throughout all of Washington County creating a large compendium of paper documentation over the 45 years that Mr. Seibert was a land surveyed for himself that are not related and will not lead to admissible evidence in this matter.

16. Mr. Frederick did not review Mr. Seibert's documents in conducting the boundary survey on the Estes or Holder Properties and all documentation used to conduct such surveys has been produced. Mr. Frederick is aware of no other documentation used in developing the boundary lines for these properties that he has not already provided to Mr. Holder.

17. Other than corporate boundary map of Keedsyville which was previously produced to Mr. Holder, Mr. Frederick is not aware of any work that Mr. Seibert performed on any of these properties. He did not find any clues or reference that Mr. Seibert performed any work on the subject properties. Additionally, Mr. Holder has not identified any specific documents within Mr.

Seibert's files that relate to any property at issue in this suit.

18. Mr. Holder is not entitled to all of FSA files. In actuality, Mr. Holder is merely seeking to annoy, embarrass, oppress, harass, create an undue burden and impress upon Mr. Frederick great expense in sending him on a goose chase to search through and produce hundreds of pages of inadmissible, irrelevant paper documents spanning over a 20+ year period. In fact, it has come to FSA's attention that Mr. Holder recently uploaded a portion of Mr. Frederick's deposition to Youtube in an effort to further embarrass, humiliate and harass Mr. Frederick.

19. Mr. Frederick has been deposed twice and is set to be deposed again on October 6, 2021 pursuant to subpoenas issued by Mr. Holder. Mr. Frederick has already performed an extensive search of all FSA files for documents requested in both subpoenas Duces Tecum issued by Mr. Holder and produced all responsive documents.

20. Maryland Rule 2-402 allows a party to obtain through discovery non-privileged matter, provided the "matter sought is relevant to the subject matter involved in the action. The information Mr. Holder seeks is not relevant, and, instead, Mr. Holder's ulterior motive is to merely to annoy, embarrass, oppress, harass, create an undue burden and impress upon Mr. Frederick great expense in sending him on a goose chase to search through and produce hundreds of pages of inadmissible, irrelevant paper documents spanning over a 20+ year period. Mr. Holder's only argument that these documents are admissible and/or relevant to the instant action is that they are not publicly available through the County. He fails to make any claim that these documents are admissible or relevant to this case. Therefore, he should not be entitled to receive these documents under discovery rules.

21. Among the grounds for granting a protective order under Md. Rule 2-403 is the avoidance of undue burden and expense on a person, particularly the non-party subject of a

subpoena. Specifically, Md. Rule 2-403(a) allows a court to rule that discovery be had only on certain conditions, including allocating of costs of compliance to the party that issued the discovery request. Md. Rule 2-510(h) further states that "a party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or cost on a person subject to the subpoena."

22. This request also seeks a pervasive examination of FSA's records, that are oppressive and irrelevant to this case. FSA notes that Request No. 4 in the Schedule of Documents covers over 45 years of documents from 1941 to 1986. (Exhibit C, Subpoenas and Schedule of Documents at Request No. 4). Reviewing 45 years of paper documents would require a great amount of time expended in order to gather and produce them. FSA estimates that responding to Request No. 4 will require costs of an IT consultant to scan in thousands of pages of documents including records, large boundary maps, and other documents, run searches for the relevant persons and terms over the 45 year period. Then, depending on the number of documents found in that search using the broad search terms provided, somewhere around five (5) to ten (10) hours of time of FSA and its attorney to sift through those documents to eliminate ones that do not relate or are not responsive to the subpoena.

23. The documents Mr. Holder seeks concerning the matters outlined in Schedule A (attached as Exhibit C), in particular, Request No. 4, seeking documents and Washington County survey records relating to any and all roads in Tax District 19 or Keedysville, MD, are simply irrelevant and not admissible to the question of whether Mr. Holder trespassed on Mr. Estes' property. FSA requests that this Court grant its Motion for a Protective Order prohibiting the production of further documentation by FSA or alternatively, that this production be reasonably limited to any documents related to Mr. Holder's property and Mr. Estes property only and that

Mr. Holder bear all expenses incurred in reviewing and producing these documents.

24. If the Court does issue an Order requiring that the document production proceed forward, including the broad searches required by Request No. 4 to the Schedule of Documents, then FSA respectfully requests that, to alleviate to some extent the burden and expense, the Order state (a) that FSA be paid its normal hourly rate for the time to search and review and produce the documents, with a retainer to be paid in advance by Mr. Holder in the amount of $1,050 for approximately seven hours of FSA's time to search and review the documents, and (b) that Justin Holder be ordered to pay the expenses of FSA's computer consultant who will scan all of the documents contained in each of the Seibert files and run the searches for all requested documents, and (c) that Justin Holder be required to pay up to a reasonable amount for FSA's counsel to review the documents and respond to FSA's questions about document production.

WHEREFORE, Non-party Frederick Seibert & Associates, Inc., respectfully requests this Honorable Court to grant the Motion for a Protective Order.

Respectfully submitted,

NON-PARTY FREDERICK SEIBERT & ASSOCIATES, INC.

By Counsel

/s/ *Sarah A. James*

Sarah A. James, Esquire CPF#2006230004
Carr Maloney P.C
2020 K Street, NW, Suite 850
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(202) 310-5500 (Telephone)
(202) 310-5555 (Facsimile)
Sarah.James@carrmaloney.com
Counsel for Non-Party Frederick Seibert *& Associates, Inc.*

RULE I-313 CERTIFICATION

I HEREBY CERTIFY that the undersigned counsel is admitted to practice law in the State of Maryland.

/s/ *Sarah A. James*
Sarah A. James

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of August, 2021, a true copy of the foregoing ***Motion for Protective Order*** was filed and served electronically to:

Justin Holder
308 W. Chapline Street
Sharpsburg, MD 21782

Brendan Callahan
P.O. Box 1091
Prince Frederick, MD 20678

Mark Schweitzer
Aaron Neal
6411 Ivy Lane, Suite 200
Greenbelt, MD 20770

Matthew Ruble
129-3 West Patrick Street
Frederick, MD ww21701

Talley Holling-Scroggs Kovacs
Office of the Attorney General
901 Dulaney Valley Road, Suite 400
580 Taylor Avenue, C-4
Annapolis, MD 21401

/s/ *Sarah A. James*
Sarah A. James

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES	:	
	:	
Plaintiff	:	
v.	:	Case No.: C-21-CV-21-000130
	:	Case No.: C-21-CV-20-000430
JUSTIN HOLDER, ET AL.	:	
	:	
Defendants	:	
	:	

NON-PARTY FREDERIC FREDERICK'S MOTION TO QUASH SUBPOENA DUCES TECUM AND TRIAL SUBPOENA

Non-party Frederic Frederick, by counsel, and pursuant to Maryland Rules 2-510(e), moves to quash the Subpoena Duces Tecum and Trial Subpoena issued by the Clerk on behalf of Justin Holder ("Motion to Quash"), and in support, states as follows:

Introduction

1. Mr. Frederick is the managing owner of Frederick Seibert & Associates, who is a non-party to the instant matter.

2. Although Mr. Frederick is a non-party, he has been involved in discovery in the instant matter as he performed a survey of Benjamin Estes' property in 2015. Prior to that, he performed a survey for Ellis Remsburg in the late 80's and Richard Jolles in the early 90's of this same Estes property. He also performed a survey of Justin Holder's (Uncle Eddie's Broken Down Palace) boundary line in 2018.

3. Mr. Frederick only used public records in performing the surveys on the Holder and Estes properties and in compliance with earlier requested discovery previously provided Mr. Holder with copies of everything he used in arriving at his final boundary decisions.

4. On March 4, 2021, Mr. Holder served a subpoena duces tecum and deposition

subpoena on Mr. Frederick in connection with an Amended Complaint filed by Mr. Estes against Mr. Holder and his wife, Deena Holder, for trespass to land, statutory claim pursuant to Maryland Natural Resources Article § 5-409 (injury to trees belonging to Plaintiff), private nuisance, aiding and abetting trespass to land, quiet title, and ejectment.

5. Mr. Frederick subsequently produced 349 pages of documents to Mr. Holder in response to his first subpoena duces tecum. Almost simultaneously, Mr. Holder conducted a deposition of Mr. Frederick in a separate, but related action pending in Maryland State Court that was approximately 6.5 hours in length.

6. In March 2021, Mr. Holder served Mr. Frederick with a second deposition subpoena in a separate action but related to the same set of facts and the same survey performed by Mr. Frederick on Mr. Estes and the Holder properties. Mr. Frederick agreed to sit for a second deposition pursuant to Mr. Holder's second subpoena and was again deposed on April 27, 2021.

7. In total, Mr. Frederick produced 1,097 pages of documents in response to two subpoenas duces tecum and has already sat for two separate depositions pursuant to deposition subpoenas, both of which were issued by Mr. Holder, collectively lasting for approximately 10 hours.

8. As a result, when Mr. Holder served another subpoena duces tecum and deposition subpoena on July 19, 2021 requesting a broad swath of documents and to depose Mr. Frederick for a third time, Mr. Frederick through counsel moved for a Protective Order.

9. Mr. Frederick's Motion for Protective Order filed on August 31, 2021 outlined the extent of testimony and documents produced by Mr. Frederick to date and requested that the Court enter a Protective Order precluding: (1) any further deposition of Mr. Frederick and (2) any further production of documents pursuant to the Schedule of Documents outlined in Mr. Holder's July 19,

2021 Subpoena Duces Tecum.

10. Mr. Holder filed his Opposition Mr. Frederick's Motion for Protective Order on the very same day.

11. On September 9, 2021, the Court granted Mr. Frederick's Motion for Protective Oder and entered a Protective Order precluding: (1) any further deposition of Mr. Frederick and (2) any further production of documents pursuant to the Schedule of Documents outlined in Mr. Holder's July 19, 2021 Subpoena Duces Tecum. (See Court Order dated September 9, 2021).

12. On January 9, 2021, Mr. Holder filed a Line Requesting Modification of the Court Order granting Frederic Frederick's Motion for Protective Order wherein he argued that he "has been significantly disabled and prejudiced by the granting of the protective order."

13. On February 4, 2022, the Court issued an Order denying Mr. Holder's request for modification and noting that the September 9, 2022 Protective Order had not been vacated that there no sufficient cause has been indicated to modify the protective order.

Pending Subpoena Duces Tecum and Trial Subpoena

14. On July 4, 2022, Mr. Holder notified undersigned counsel that he intended to call Mr. Frederick as a fact witness at trial in the above captioned matter and that he intends Mr. Frederick's testimony to cover various portions of his work regarding the boundary line. See Frederick's Exhibit 1.

15. Undersigned counsel notified Mr. Holder that Mr. Frederick had previously planned to be out of town on a pre-planned vacation from September 28, 2022 through the evening of October 5, 2022 and requested that the subpoena be amended to reflect only October 6, 2022.

16. Mr. Holder notified counsel that although the subpoena had been issued prior to his initial communication that he would be amenable to only calling Mr. Frederick to testify on

October 6, 2022.

17. Mr. Frederick notified undersigned counsel on September 2, 2022 that he had finally been served with Mr. Holder's referenced subpoena. See Frederick's Exhibit 2.

18. Unlike the initial communications with Mr. Holder represented, the subpoena not only requested Mr. Frederick's trial testimony but also requested the production of documents identified as "[a]ny and All communications related to survey work for Benjamin Estes or Justin Holder with John Dowling, Aaron Neal, and Benjamin Estes." *Id.*

19. On September 16, 2002, undersigned counsel notified Mr. Holder that the request for documents violates the current Protective Order and requested that he correct the subpoena to comply with the Protective Order and agreed upon October 6, 2022 date.[1] Undersigned counsel represented that she was authorized to accept service of a corrected subpoena on behalf of Mr. Frederick, but in the event Mr. Holder sought to enforce the current noncompliant subpoena that a Motion to Quash would be filed.

20. On September 19, 2022, the Court granted Plaintiff Estes' Motion for Summary Judgment in part.

21. The Court's September 19, 2022 Opinion specifically found in Mr. Estes' favor as to the location of the boundary line and noted that the only remaining issues to be heard at the upcoming bench trial (1) whether Plaintiff s rights to the land under the water of the Creek prohibits others, including the Holder family, from using the Creek bottom within Plaintiff's property line, and (2) injunction.

22. As a result of the issuance of summary judgment, undersigned counsel contacted

[1] Undersigned counsel noted to Mr. Holder that she was out of the office from September 9-12, 2022 due to the loss of a family member and therefore did not notify Mr. Holder of her objection until September 16, 2022.

Mr. Holder to confirm he no longer intended to call Mr. Frederick as a witness at trial as the entry of summary judgment rendered his previously identified scope of testimony topics irrelevant.

23. However, Mr. Holder represented that despite the court's ruling and Mr. Frederick's role solely as a fact witness, he intends to call Mr. Frederick at trial.

24. Upon inquiry as to the scope of his testimony, Mr. Holder provided a one-page deposition transcript and proffered on September 28, 2022 that his "questions if any will be directed at the factual basis Mr. Frederick relied on when he Sua Sponte injected same into his prior testimony." Frederick Exhibit 3.

25. Mr. Holder also represented that this area of testimony would be rendered moot through a potential stipulation between himself and Mr. Estes' counsel. As a result, Mr. Frederick hoped to have the issue resolved without the need for additional court intervention. However, as of the filing of the instant Motion it is the undersigned's understanding that no such stipulation has been reached.

26. Therefore, Mr. Frederick asks this court to quash Mr. Holder's Subpoena Duces Tecum and Trial Subpoena in its entirety.

27. As to the Subpoena Duces Tecum, this Court has in no way vacated its September 9, 2022 Protective Order. Therefore, the renewed request for documents outlined are in violation of this Court September 9, 2022 Protective Order and should be quashed.

28. Moreover, the proffered testimony Mr. Holder presents multiple grounds by which this court should quash his Trial Subpoena. First, Mr. Holder has identified that his line of questioning of Mr. Frederick addresses out of court statements made by Mr. Frederick. Any such statements would not only be impermissible hearsay but are also irrelevant to the issue at hand, which is whether Plaintiff's rights to the land under the water of the Creek prohibits others,

including the Holder family, from using the Creek bottom within Plaintiff's property line.

29. Additionally, Mr. Holder can only serve as a fact witness in this case and cannot provide any expert testimony as to navigability of the Creek or rights attributed to each party. Therefore, any attempt to seek opinions or factual basis of those opinions from Mr. Frederick regarding the same is irrelevant to the current issues before the court.

FOR THESE REASONS, Frederic Frederick, expressly requests that his Motion to Quash be granted in its entirety along with other relief as this Court deems proper.

Respectfully submitted,
By Counsel

CARR MALONEY P.C

/s/ Savannah M. Selvaggio

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Counsel for Non-Party Frederic Frederick

CERTIFICATE OF REDACTION

I HEREBY CERTIFY that the foregoing submission does not contain any restricted information or, if this submission does contain restricted information, then a redacted submission has been filed contemporaneously herewith in accordance with Maryland Rule 20-201(f)(2).

/s/ Savannah M. Selvaggio
Savannah M. Selvaggio

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of October, 2022, a true copy of the foregoing ***Non-Party Frederic Frederick's Motion to Quash Subpoena Duces Tecum and Trial Subpoena*** was filed and served electronically to:

Justin Holder
308 W. Chapline Street
Sharpsburg, MD 21782

Alyse Prawde
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Greenbelt, MD 20770

Brendan Callahan
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580 Taylor Avenue, C-4
Annapolis, MD 21401

/s/ Savannah M. Selvaggio
Savannah M. Selvaggio

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

BENJAMIN ESTES	:	
	:	
Plaintiff	:	
v.	:	Case No.: C-21-CV-21-000130
	:	Case No.: C-21-CV-20-000430
JUSTIN HOLDER, ET AL.	:	
	:	
Defendants	:	
	:	

NON-PARTY FREDERIC FREDERICK'S MOTION TO QUASH SUBPOENA DUCES TECUM FOR TRIAL ON DECEMBER 15-16, 2022

Non-party Frederic Frederick, by counsel, and pursuant to Maryland Rules 2-510(e), moves to quash the Subpoena Duces Tecum and Trial Subpoena issued by the Clerk on the request of Justin Holder, which demands Mr. Frederick's appearance as a witness at the December 15-16, 2022 rescheduled trial date, and which also demands documents ("December Trial Subpoena"). This Motion should be granted because (a) the request for documents in the December Trial Subpoena violates and contradicts the September 9, 2021 Protective Order entered by this Court in this matter; and (b) Mr. Frederick's scope of knowledge as a surveyor of the properties in question, and any fact testimony he could give, is no longer relevant to any remaining issue to be addressed at the December bench trial, in light of this Court's Summary Judgment Order of September 19, 2022.

In further support of this Motion, Mr. Frederick states as follows:

Factual & Procedural Background

1. Mr. Frederick is the managing owner of Frederick Seibert & Associates, and is not a party to the instant matter.

2. Although Mr. Frederick is a non-party, he has been involved in discovery in the

instant matter as he performed a survey of Benjamin Estes' property in 2015. Prior to that, he performed a survey for Ellis Remsburg in the late 80's and Richard Jolles in the early 90's of this same Estes property. He also performed a survey of Justin Holder's (Uncle Eddie's Broken Down Palace) boundary line in 2018.

3. Mr. Frederick only used public records in performing the surveys on the Holder and Estes properties. In compliance with earlier requests, Mr. Frederick previously provided Mr. Holder with copies of everything he used in arriving at his final boundary decisions.

4. On March 4, 2021, Mr. Holder served a subpoena duces tecum and deposition subpoena on Mr. Frederick in connection with an Amended Complaint filed by Mr. Estes against Mr. Holder and his wife, Deena Holder, for trespass to land, statutory claim pursuant to Maryland Natural Resources Article § 5-409 (injury to trees belonging to Plaintiff), private nuisance, aiding and abetting trespass to land, quiet title, and ejectment.

5. Mr. Frederick subsequently produced 349 pages of documents to Mr. Holder in response to his first subpoena duces tecum. Almost simultaneously, Mr. Holder conducted a deposition of Mr. Frederick in a separate, but related action pending in Maryland State Court that was approximately 6.5 hours in length.

6. In March 2021, Mr. Holder served Mr. Frederick with a second deposition subpoena in a separate action, Case No. C-21-CV-20-000430 (one of the consolidated cases herein), related to the same set of facts and the same survey performed by Mr. Frederick on Mr. Estes and the Holder properties. Mr. Frederick agreed to sit for a second deposition pursuant to Mr. Holder's second subpoena and was again deposed on April 27, 2021.

7. In total, Mr. Frederick produced 1,097 pages of documents in response to two subpoenas duces tecum and has already sat for two separate depositions pursuant to deposition

subpoenas, both of which were issued by Mr. Holder, collectively lasting for approximately 10 hours.

8. As a result, when Mr. Holder served another subpoena duces tecum and deposition subpoena on July 19, 2021 requesting a broad swath of documents and to depose Mr. Frederick for a third time, Mr. Frederick through counsel moved for a Protective Order.

9. Mr. Frederick's Motion for Protective Order filed on August 31, 2021 outlined the extent of testimony and documents produced by Mr. Frederick to date and requested that the Court enter a Protective Order precluding: (1) any further deposition of Mr. Frederick and (2) any further production of documents pursuant to the Schedule of Documents outlined in Mr. Holder's July 19, 2021 Subpoena Duces Tecum.

10. Mr. Holder filed his Opposition Mr. Frederick's Motion for Protective Order on the very same day.

11. On September 9, 2021, the Court granted Mr. Frederick's Motion for Protective Oder and entered a Protective Order precluding: (1) any further deposition of Mr. Frederick and (2) any further production of documents pursuant to the Schedule of Documents outlined in Mr. Holder's July 19, 2021 Subpoena Duces Tecum. (See Court Order dated September 9, 2021).

12. On January 9, 2021, Mr. Holder filed a Line Requesting Modification of the Court Order granting Frederic Frederick's Motion for Protective Order wherein he argued that he "has been significantly disabled and prejudiced by the granting of the protective order."

13. **On February 4, 2022, the Court issued an Order denying Mr. Holder's request for modification of the September 9, 2021 Protective Order**.

14. On July 4, 2022, Mr. Holder notified counsel for Mr. Frederick that he intended to

call Mr. Frederick as a fact witness at the trial in the above captioned matter which was then scheduled for October 2022. In doing so, Mr. Holder stated that he intends Mr. Frederick's testimony to cover various portions of his work regarding the boundary line. See *Exhibit 1*.

15. On September 2, 2022, Mr. Frederick was served a subpoena for trial testimony and documents for the trial date in October 2022. See *Exhibit 2*.

16. In view of the Protective Order that this Court had entered on September 9, 2021 (see above), it was a significant surprise that the trial subpoena also requested the production of documents identified as "[a]ny and All communications related to survey work for Benjamin Estes or Justin Holder with John Dowling, Aaron Neal, and Benjamin Estes." *Id.*

17. On September 16, 2002, Mr. Frederick's counsel notified Mr. Holder that the request for documents in the subpoena for the October trial violated the September 2021 Protective Order and requested that Mr. Holder correct the subpoena to comply with the Protective Order and agreed upon October 6, 2022 date.

18. **On September 19, 2022, the Court granted Plaintiff Estes' Motion for Summary Judgment in part. The Court's September 19, 2022 Opinion specifically found in Mr. Estes' favor as to the location of the boundary line and noted that the only remaining issues to be heard at the upcoming bench trial (1) whether Plaintiff s rights to the land under the water of the Creek prohibits others, including the Holder family, from using the Creek bottom within Plaintiff's property line, and (2) injunction**.

19. As a result of the issuance of summary judgment, Mr. Frederick's counsel asked Mr. Holder to confirm he no longer intended to call Mr. Frederick as a witness at trial, because the entry of summary judgment rendered his previously identified scope of testimony topics irrelevant. Mr. Holder replied that despite the court's ruling, he still intended to call Mr. Frederick to testify

at trial.

20. Upon inquiry as to the scope of testimony, Mr. Holder provided a one-page deposition transcript and proffered on September 28, 2022 that his "questions if any will be directed at the factual basis Mr. Frederick relied on when he Sua Sponte injected same into his prior testimony." See *Exhibit 3*. Mr. Holder also said that this area of testimony could be rendered moot through a potential stipulation between himself and Mr. Estes' counsel. As a result, Mr. Frederick expected that the issue would be resolved without the need for additional court intervention.

21. Then, this Court continued the October trial date to December, and by Order of October 5, 2022, this Court denied as moot Mr. Frederick's Motion to Quash as to the subpoena for the October trial date.

22. Unfortunately, the issue has arisen again because, on November 10, 2022, Mr. Frederick was served with a new subpoena, for trial testimony and records on the new trial dates of December 15 and 16, 2022. The new subpoena was a copy of the same subpoena that was served in September, but with the trial date changed. See *Exhibit 4*.

ARGUMENT

Mr. Frederick asks this court to quash the December Trial Subpoena in its entirety, for the following reasons.

First, in regard to the request for documents in the new subpoena violates or contradicts this Court's September 9, 2022 Protective Order, which prohibited Mr. Holder from seeking further documents from Mr. Frederick, who had already produced all relevant documents and who already testified for many hours in two depositions in litigation between these parties.

Second, in regard to the request for testimony, (a) Mr. Frederick has not agreed to be a

retained expert witness, and (b) his only scope of knowledge as a fact witness would be in regard to his determination of the property boundary in several surveys, and the issue of the location of the boundary relative to the creek has already been decided by this Court's September 19, 2022 Summary Judgment Order. By virtue of that Summary Judgment Order, the issue of the property boundary line and related surveys is no longer to be addressed at the December bench trial. Rather, the only remaining issues to be heard at the December bench trial are (1) whether Plaintiff s rights to the land under the water of the Creek prohibits others, including the Holder family, from using the Creek bottom within Plaintiff's property line, and (2) injunction. Those are each legal issues on which Mr. Frederick cannot opine or testify.[1]

FOR THESE REASONS, Frederic Frederick, expressly requests that his Motion to Quash be granted in its entirety along with other relief as this Court deems proper.

Respectfully submitted,
By Counsel

CARR MALONEY P.C

/s/ Kevin M. Murphy

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[1] Mr. Holder suggested in his September 28, 2022 email, that attached one page of Mr. Frederick's deposition (Exhibit 3), that Mr. Frederick would be able to testify about whether Mr. Holder or others have rights to use the creek if it is navigable. But, it is clear from Mr. Frederick's very brief deposition comment, that he was referencing his lay person's understanding or belief about what constitutes navigable water, and what use may be made of such water. Mr. Frederick has never claimed to be an expert in these areas, which is a matter of law, not a survey matter. He is a surveyor. Any efforts by Mr. Holder to elicit testimony from Mr. Frederick on these topics would not only be impermissible hearsay, but would also be an impermissible attempt to make Mr. Frederick into an expert opinion witness when he has not agreed to be a retained expert witness, and especially not on topics that are not within his field of expertise (the legal definition of navigable waters; and legal rights of use to such waters).

CERTIFICATE OF REDACTION

I HEREBY CERTIFY that the foregoing submission does not contain any restricted information in accordance with Maryland Rule 20-201.1.

/s/ Kevin M. Murphy
Kevin M. Murphy

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of November, 2022, a true copy of the foregoing ***Non-Party Frederic Frederick's Motion to Quash Subpoena Duces Tecum and Trial Subpoena*** was filed and served electronically to:

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